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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge

Case No. 2019-CP-40-01231
Appellate Case No. 2020-000465

Kevin O'Hara, Rebekah H. O'Hara and Krebone Enterprises, LLC,.....Respondent,

v.

Middleborough Horizontal Property Regime, ...Appellant.

RECORD ON APPEAL

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INDEX

Orders

Order filed March 3, 2021 1

Order Denying Defendant’s Motion to Alter or Amend filed April 12, 2021 16

Pleadings

Complaint filed February 28, 2019 19

Defendant’s Answer and Counterclaim filed May 3, 2019 84

Plaintiff’s Answer to Defendant’s Counterclaim filed May 17, 2019 149

Defendant’s Amended Answer, Counterclaim and Third-Party Complaint
filed May 30, 2019 156

Third-Party Defendant’s Answer to Third-Party Complaint
filed July 1, 2019 234

Transcript of Proceedings held January 29, 2021, including
Exhibits 1, 2, 3, 5, 5, 8, 9 and 10 243

Defendant’s Motion to Alter or Amend Order Denying Motion to Dismiss
and to Compel Arbitration filed March 15, 2021 377

Certificate of Counsel 384

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Kevin O'Hara, Rebekah H.)
O'Hara and Krebone Enterprises, LLC)
Plaintiff-Petitioner,)
v.)
Middleborough Horizontal)
Property Regime,)
Defendant-Respondent.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Case No. 2019-CP-40-01231

ORDER

INTRODUCTION

This matter came to trial before this Court on January 29, 2021 and was conducted by remote technology. Kevin and Rebekah O'Hara (the "O'Haras" or "Co-Owners") and Krebone Enterprises ("Krebone") were represented by Wesley Peel of Bruner, Powell, Wall & Mullins, LLC. The Defendant, Middleborough Horizontal Property Regime ("Middleborough" or the "Regime"), was represented by Christian Saville of McCabe, Trotter & Beverly PC and Kirby Shealy of Adams and Reese LLP. The parties consented to the introduction of eighteen exhibits. Each party presented one witness. The Plaintiffs called Mr. Kevin O'Hara and the Defendant called Mr. Ken Baker, a board member of the regime. This Court has reviewed the pleadings and briefs filed in this matter, as well as the exhibits and witness testimony presented at trial. Based on careful consideration of the foregoing, this Court finds as follows:

I. PROCEDURAL HISTORY

Plaintiffs Kevin O'Hara and Rebekah H. O'Hara own two condominium units in

Middleborough, which are within the horizontal property regime managed by Defendant. Plaintiffs filed their Summons and Complaint on February 28, 2019 seeking a declaratory judgment and an order restraining and enjoining Defendant Middleborough from prohibiting the O’Haras from renting out their units in Middleborough on a short-term basis, interfering with the renters’ rights to use the common areas, and “otherwise violating the Master Deed regarding any restrictions on the O’Haras’ leases not set forth in the Master Deed.” Plaintiffs alleged in their Complaint that a 2019 Regulation passed by Middleborough, which provided that the offering of a rental of any residential unit for a term of less than thirty days was deemed by the Board of Directors to violate Article II of the Bylaws of Middleborough Horizontal Property Regime (the “Bylaws”), constituted an illegal attempt to restrain the Plaintiffs from renting their units on a short-term basis. It was Plaintiffs’ position that the 2019 Regulation was illegal and ineffectual under the Horizontal Property Act, which provides at S.C. Code § 27-31-100(h) that a master deed shall express, among other things, any restrictions or limitations on the lease of a unit including, but not limited to, the amount and term of the lease.

Defendant Middleborough filed its Amended Answer and Counterclaim on May 30, 2019, seeking a declaratory judgment and an order enjoining Plaintiffs from facilitating the short-term rental of their units.¹ While Plaintiffs challenged the validity of the 2019 Regulation regarding short-term rentals, Defendant made it clear that it was actually a provision of the Bylaws, which are an exhibit to and incorporated into the Master Deed, not the 2019 Regulation, that prohibits short-term rentals. Specifically, Defendant relies upon Article XI, Section A(1) of the Bylaws, which provides “Apartments in Phase 1 shall be used only as residences.”

¹ Defendant also named Plaintiff Krebone Enterprises, LLC (“Krebone”) in the suit on the basis that Krebone was a corporation through which Defendant alleged the O’Haras facilitated the rental of the units.

The Co-Owners and the Regime seek declaratory judgments to determine the parties' rights related to the Co-Owners' short-term rental of Units 2J and 14G in Middleborough and renters use of the common area. The parties reached a temporary agreement shortly after litigation began to preserve the status quo regarding the rentals until this Court issued a ruling. Therefore, the Plaintiff's request for damages is not an issue and the sole matter before the court is the resolution of the parties' rights regarding the rental terms allowed for Apartment Owners in Middleborough and the Regime's ability to restrict the Co-Owners' and renters' rights for full and complete use of the property.

II. SUMMARY OF FACTS

Middleborough is a Horizontal Property Regime created under a Master Deed duly executed and recorded pursuant to the South Carolina Horizontal Property Act (SCHPA), S.C. Code Ann. § 27-31-10 *et seq.* As provided in the Master Deed, Middleborough consists of two phases: Phase 1 under the Master Deed consists of 192 residential apartments. Phase 2 was created by amendment to the Master Deed dated December 21, 1984, adding the first floor and basement as residential rental space and allowing use of those areas as residential rental space or as commercial retail or office space. The Bylaws of Middleborough Horizontal Property Regime (the "Bylaws") were recorded as Exhibit D to the Master Deed and incorporated therein. Article XI, Section A(1) of the Bylaws, captioned "Restrictions," provides as follows: "Apartments in Phase I shall be used only as residences."

Plaintiffs Kevin O'Hara and Rebekah H. O'Hara purchased Apartment Unit 2J and Unit 14G, both in Phase I of Middleborough, on March 31, 2015, and August 25, 2017, respectively. Plaintiffs renovated and furnished the apartments so as to be suitable for short-term rentals and established an LLC, Krebone Enterprises ("Krebone"), along with a website for Krebone, to

facilitate the rental of the units. However, Mr. O'Hara testified that Plaintiffs decided not to use Krebone to rent out the units once they learned about the online platforms of Airbnb and VRBO. While Plaintiffs have and continue to rent out Unit 2J for terms as brief as two nights, they have not engaged in this activity with Unit 14G but are interested in doing so if they prevail in this action. Mr. O'Hara confirmed that neither he nor Ms. O'Hara live at Middleborough. According to Mr. O'Hara, Plaintiffs stayed at Middleborough temporarily while their residence elsewhere in Columbia was undergoing renovations, but that was many years ago. They own other investment properties in addition to their units at Middleborough. Plaintiffs do not stay at Middleborough while their property there is being rented.

Middleborough Horizontal Property Regime is an eighteen-story high rise condominium in Columbia, South Carolina, with approximately 192 apartments. The O'Haras purchased Middleborough Unit 2-J on March 31, 2015 (Exhibit 1) and Unit 14-G on August 25, 2017 (Exhibit 2) (collectively, the "Units"). Mr. O'Hara testified that he purchased the Units with the intention of leasing them for short-term rentals for terms of less than ninety days. Mr. O'Hara reviewed the Middleborough Master Deed (Exhibit 3) and By-Laws (Exhibit 5) prior to purchasing the Units to ensure that there were no restrictions in either document that would restrict his ability to lease the Units as short-term rentals. Mr. O'Hara informed the City of Columbia of his plans to rent the Units short-term and obtained rental permits from the City (Exhibit 6). The City of Columbia Rental Housing Regulations (Columbia Municipal Ordinance Section 5-325, et seq.) define Mr. O'Hara's apartments as "Residential rental units" and therefore the city requires Mr. O'Hara to obtain rental permits.

The O'Haras originally planned to rent the units through their company, Krebone Enterprises, but discovered that it was much easier to rent the units through online platforms, such

as Airbnb and VRBO. Although Krebone has a website promoting the units, Mr. O'Hara testified that they have never rented the Units through Krebone and Krebone has no relation to the Units other than the defunct website that Mr. O'Hara is uncertain how to disable.

Since purchasing the Units, the O'Haras advertised and continuously rented Unit 2J through Airbnb and VRBO. Individuals can rent Unit 2J for two-night minimums, and the average rental since 2015 has been for 4.4 nights. Unit 14G is only rented on a 30-day minimum basis at the current time; however, the O'Haras contemplate renting it for shorter terms in the future. The Units do not have a front desk or office for customer service, they do not have a centralized telephone system, nor do the O'Haras provide housekeeping services to their renters.

The Defendant, Middleborough, is a horizontal property regime established pursuant to South Carolina Code Section 27-31-30 and its Master Deed, filed on November 12, 1981, and amended on December 21, 1984 (Exhibits 3 and 4). Middleborough is governed by the South Carolina Horizontal Property Act (SCHPA) (S.C. Code Section 27-31-10 *et. seq.*), the Master Deed, its amendment, and the By-laws of Middleborough Horizontal Property Regime (Exhibit 5). Some Middleborough apartments are owned by business entities and previously some apartment's terms of lease have been for less than a year—as demonstrated in the Bob Capes advertisement for 3-month rentals of a furnished Middleborough apartment (Exhibit 13).

On July 14, 2016, the then-president of the Middleborough Board of Directors' (the "Board") sent Mr. O'Hara a letter demanding that the O'Haras "cease and desist" from renting Unit 2J on a short-term basis. (Exhibit 8). The letter stated that Mr. O'Hara was violating Bylaw Article XI.A.(1), which states, "Apartments in Phase 1 shall be used only as residences" and classified the O'Haras short-term rental as a "commercial activity." On August 29, 2016, through counsel, Mr. O'Hara responded to the Board's letter. (Exhibit 9). Mr. O'Hara's letter stated that

there were no restrictions in the Master Deed restricting lease terms and that short term rentals constituted residential use. Subsequently, Mr. O'Hara heard nothing in response until the Board issued a document entitled "Middleborough Horizontal Property Regime Rules and Regulations, Revised January 7, 2019" (the "Revised Rules"). (Exhibit 10).

The Revised Rules appear to be an indirect attempt by the Board to stop the O'Haras from renting the Units short-term as the O'Haras had planned, and to restrict the O'Haras' guests from having the full and complete enjoyment of the common areas. It is undisputed that the Revised Rules were adopted by the Board only and that the Revised Rules were not put to a vote by the Apartment Co-owners of Middleborough. The Revised Rules contain various restrictions on short-term rentals and the use of common areas in Middleborough, including but not limited to the following.

On Revised Rules page 2, the Revised Rules define "co-owner," "residents," "guest," and "tenant" as:

A co-owner is a person who owns the condominium unit and pays the regime fees, assessments, and property taxes. A resident is a person who resides in the condominium. Residency is established by receiving mail at Middleborough under the unit number occupied and paying utility costs and other related expenses for the unit. A guest is a person whose mailing address is not that of any Middleborough unit and who is temporarily housed for any length of time in a co-owner's or resident's unit. A tenant is a person who is leasing any of the commercial spaces at Middleborough.

Revised Rules Sections VII through X address the use of the common areas.

Revised Rule Section XXI is a direct prohibition by the Board, without vote of the co-owners, restricting a Co-Owner's ability to lease their units for less than thirty days and defines that type of rental as "non-residential". The Revised Rule does not differentiate the character of the use of the units by a two-night term, a two-week term, a three-month term, or a yearly rental

of a unit at Middleborough. This section prohibits Mr. O'Hara's use of Airbnb and VRBO to lease his Units as planned and provides for a \$10.00 per day penalty for violation of this rule. None of these limitations are contained in the Middleborough Master Deed or By-laws or were approved by a vote of the co-owners.

The O'Haras seek (1) an injunction order finding that Middleborough cannot restrict rental terms for less than thirty days or renter's rights to the common areas pursuant to the Master Deed, By-Laws, common and statutory law; (2) a declaratory judgement declaring that the Revised Rules are unenforceable and a violation of the Master Deed and the South Carolina Horizontal Property Act, S.C. Code Section 27-31-10 *et. seq* which requires all lease term restrictions be stated in the Master Deed and; (3) a declaratory judgement declaring that any co-owner may rent their units without restriction as to term; and (4) Krebone seeks a dismissal and a determination that it was not engaged in the rental of any Middleborough units.

Conversely, Middleborough seeks (1) a declaratory judgment that the O'Haras' and Krebone's short-term rental of Units 2J and 14G is a non-residential use that violates Middleborough's Master Deed and By-laws; (2) injunctive relief; (3) a finding against Plaintiffs for Breach of Covenants; (4) enforcement of restrictive covenants; and (5) specific performance. As a matter of procedure, Middleborough sought to add Krebone as a Third-Party Defendant. The parties reached an agreement to join Krebone as a Plaintiff-Petitioner.

III. DISCUSSION

As a preliminary matter, Plaintiffs have challenged the legality and enforceability of the 2019 Revised Regulation passed by Middleborough which construes rentals of residential units for terms of less than thirty (30) days as prohibited non-residential uses of the property. This Court agrees with Plaintiffs that the 2019 Regulation is, in fact, ineffectual under S.C. Code § 27-31-

100(h) because it constitutes a restriction on terms of leases which is not set forth by the Master Deed. However, Defendant does not rely on the 2019 Regulation as a basis for prohibiting Plaintiffs' current and intended use of the property. Rather, Defendant Middleborough argues that Plaintiffs' use of the units as a short term-rental is prohibited by Article XI, Section A(1) of Middleborough's Bylaws, which is an exhibit to and incorporated into the Master Deed. Section A(1) provides, "Apartments in Phase I shall be used only as residences."

Plaintiff argues that the provision in the Bylaws limiting the units to be used "only as residences" does not prohibit short-term rentals. The court agrees.

Conflicts regarding restrictive covenants are to be resolved in favor of the free use of the property. "'Restrictive covenants are contractual in nature,' so that the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document." *Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 863-64 (1998) (quoting *Palmetto Dunes Resort v. Brown*, 287 S.C. 1, 6, 336 S.E.2d 15, 18 (1985)). "When the language of a contract is clear, explicit, and unambiguous, the language of the contract alone determines the contract's force and effect and the court must construe it according to its plain, ordinary, and popular meaning." *Moser v. Gosnell*, 334 S.C. 425, 430, 513 S.E.2d 123, 125 (Ct. App. 1999).

"A restriction on the use of the property must be created in express terms or by plain and unmistakable implication." *Id.* (quoting *Hamilton v. CCM, Inc.*, 274 S.C. 152, 157, 263 S.E.2d 378, 380 (1980)). "The court may not limit a restriction in a deed, nor, on the other hand, will a restriction be enlarged or extended by construction or implication beyond the clear meaning of its terms["] even to accomplish what it may be thought the parties would have. *Cnty. Servs Assocs. v. Wall*, 421 S.C. 575, 581, 808 S.E.2d 831, 834 (Ct. App 2017). If the language used in the

restriction is capable of two or more different constructions, the court must use the interpretation that “least restricts the use of the property.” *Taylor*, 332 S.C. at 4, 498 S.E.2d at 864.

“A restriction on the use of the property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property.” *Buffington v. T.O.E. Enterprises*, 383 S.C. 388, 392, 680 S.E.2d 289, 291 (2009). “Thus, courts tend to strictly interpret restrictive covenants, and to enforce a restrictive covenant, a party must show that the restriction applies to the property either by the covenant's express language or by a plain and unmistakable implication.” *Id*

The Middleborough Horizontal Property Regime was formed pursuant to the South Carolina Horizontal Property Act, S.C. Code Section 27-31-10 *et. seq* (SCHPA), on October 14, 1981 by and through its Master Deed duly recorded in the Richland County Register of Deeds. (Exhibit 3). The SCHPA states that a regime is established when the owners record a Master Deed which sets forth certain particular items as required by Section 37-31-100. *See* S.C. Code § 27-31-30.

South Carolina Code Section 37-31-100 requires that certain items must be contained in the Master Deed. These items include, among other things, a description of the land, a general description of each apartment, the common elements, and the name of the regime. Specifically, Section 27-31-100(h) requires that the Master Deed must express “(a)ny restrictions or limitations on the lease of a unit including, but not limited to, the amount and **term** of the lease.” (emphasis added). During his testimony, Mr. Baker admitted that the Master Deed does not restrict or limit the term of a leased unit. Mr. O’Hara testified that he relied on the Master Deed when he purchased the Units, and particularly reviewed it to assure himself that there were no restrictions on lease terms. Despite Master Deed Section IX.A. providing that an amendment to the Master Deed must

be done by the written agreement of all of the Co-owners, Mr. Baker admitted that the co-owners had not voted to amend the Master Deed to restrict lease terms. (Exhibit 3).

Our courts have already determined that the short-term rental of condos does not constitute a hotel operation. In *Landing Development Company v. City of Myrtle Beach*, 285 S.C. 216, 329 S.E.2d 423 (1985) the plaintiff sued Myrtle Beach to enjoin the City from denying rental permits for short-term rentals in a condominium that it was managing for individual apartment owners. The city refused to issue the permits alleging that short-term rentals were not permitted in that particular zoning district. The City argued that the management company renting the units was operating a “motel operation,” just as Middleborough frames its argument against the O’Haras. The court in *Landing Development Company* found the units were individually owned and offered for rental through the management company and that “the fact of short-term rentals and the availability of convenience services to tenants do not operate to convert individually owned condominium units into a motel” *Id.* at 221, 425. The City also argued that its zoning ordinance required the units to be used for “permanent occupancy,” much like Middleborough argues that its By-laws restrict use to “residential use.” The court in *Landing Development Company* found that the term “permanent occupancy” was not defined in the ordinance nor law equating that term with being a permanent residence. *Id.* at 219, 424.

Similarly, Middleborough’s Master Deed and By-Laws do not define the term “residential use.” “Generally speaking, ‘residential use’ is one that involves activities generally associated with a personal dwelling.” 20 *Am. Jur. 2d Covenants, Etc.* § 179. “Similarly, a ‘residential building’ is a building which is used for residential purposes or in which people reside, dwell, or make their homes, as distinguished from one which is used for commercial or business purposes.” *Id.* “The phrase ‘residential purposes’ does not mean only the occupying of a premises for the

purpose of making it one's 'usual' place of abode; a building is a residence if it is 'a' place of abode." *Id.* "The word 'residence' is one of multiple meanings, however, and hence the context in which it is used must be taken into consideration in determining its meaning in any particular case." *Id.*

In *Community Services Assocs. V. Wall*, 421 S.C. 575, 808 S.E.2d 831 (Ct. App. 2017), the Court of Appeals found that the short-term rental of a portion of a villa in Sea Pines Plantation complied with the "Residential Purposes" requirement of the community's restrictive covenants. The Sea Pines restrictive covenants stated that "All lots in said Residential Areas shall be for residential purposes exclusively." *Id.* at 579, 833. The court found that the owners' short-term rental of a portion of their villa "do[es] not violate the requirement that all lots shall be used for residential purposes." *Id.* at 585, 836.

This court finds that the term "residential purposes" generally relates to the character of the use, not its term, and that short-term rentals are not precluded as inconsistent with residential use. Other states have considered this issue and similarly held that a "residential purposes" restriction in a restrictive covenant did not prohibit short-term rentals. As long as the property is being used for living purposes, it does not cease being "residential" simply because the use is temporary instead of permanent. *See Houston v. Wilson Mesa Ranch Homeowners Assoc. Inc.*, 360 P.3d 255 (Colo. Ct. App. 2015); *Ross v. Bennett*, 203 P.3d 383 (Wash. Ct. App. 2008); *Lowden v. Bosley*, 909 A.2d 261 (Md. 2006); *Pinehaven Planning Board v. Brooks*, 70 P.3d 664 (Idaho 2003); *Slaby v. Mountain River Estates Residential Ass'n*, 100 So. 3d 569 (Ala. Civ. App. 2012).

Short-term rentals of condominium apartments are common in this state. Middleborough argues that the O'Haras are engaged in a business or are running a hotel and are a lodging establishment. Short-term rentals directly by real property owners or through a management

company do not subject the O’Haras to the Lodging Establishment Act, S.C. Code Section 45-2-10. Rather, rentals such as the O’Haras come under the South Carolina Vacation Rental Act, S.C. Code Section 27-50-210 *et seq.* The Vacation Rental Act applies to “Residential property” which includes apartments and condominiums, “devoted to residential use or occupancy by one or more persons for a definite or indefinite period.” A “vacation rental” is a “lease, sublease, or other rental of residential property for a period of fewer than ninety days,” but does not apply to rentals that would otherwise come under the South Carolina Residential Landlord and Tenant Act. *See* S.C. Code Section 27-50-220. The Vacation Rental Act excludes lodging provided by hotels or other entities that provide a front desk for customer service, or a centralized telephone system, or provide housekeeping services at no additional charge. *See* S.C. Code Section 27-50-220 (B)(3). The General Assembly has therefore determined that rentals such as the O’Haras are for a residential use as the South Carolina Vacation Rental Act defines their units as “Residential Property.”

Middleborough’s attempt to restrict the rights of owner’s and renter’s rights to use the common areas is a violation of the SCHPA, the Middleborough Master Deed, and the Middleborough By-Laws. Middleborough has gone even farther and has restricted the use of the Common Areas to people that do not receive their mail at Middleborough, regardless of their status as an owner or renter. Middleborough cannot restrict an owner’s or renter’s use of the commons areas as defined by the Master Deed. Such action is prohibited by SCHPA. *See* S.C. Code Section 27-31-120 (“Any conveyance or lease of an individual apartment is deemed to also convey or lease the undivided interest of the owner in the common elements, both general and limited, appertaining to the apartment without specifically or particularly referring to same.”). Therefore, any rental of a unit conveys with the owner’s right to use the common areas.

The Master Deed defines “Co-owner” as “an individual, firm, corporation, partnership, associations, trust or other legal entity, or any combination thereof, of who owns an apartment.” (Exhibit 3, p.3.) As set forth in Master Deed Article IX.A., this definition cannot be changed except by written consent of all the unit owners. (Exhibit 3., p. 7). In the 2019 Rules, the Board changed the definition of a Co-owner to a “person who owns the condominium unit and pays the regime fees, assessments, and property taxes.” By this definition, none of the corporations or partnerships that own units are “Co-owners” in Middleborough. Article IV of the Master Deed provides that Each Co-owner is entitled to the use of the Common Elements for the purpose they were intended. (Ex. 3, page 4). Article X.A., provides that all Co-owners and their tenants are subject to the SCHPA, the Master Deed and the By-Laws. (Ex. 3, p. 8).

In addition to the Board’s Revised Rules that violate the SCHPA and the Master Deed, the Board has also violated the By-Laws. By-Laws Section X.B provides in relevant part:

. . . the consent of the Owners of Apartment units to which at least sixty-seven percent (67%) of the votes in the Council of Co-Owners are allocated and the approval of holders of mortgages on Apartment Units which have at least fifty-one percent (51%) of the votes of Apartment units subject to mortgages, shall be required to add or amend any material provisions of these Bylaws, the Master Deed or **other Regime documents of the Property** which establish, provide for, govern, or regulate any of the following: . . . 5. Rights to use the common areas; . . . 11. Leasing of Apartment Units . . . (Exhibit 5, Article X, B.).

Therefore, any of the changes made by Middleborough that relate to the use of the common areas and the leasing of the units cannot be taken by Board action and require an approval of 67% of the Co-Owners. Mr. Baker admitted that no such vote was taken in approving the 2019 Rules.

Based upon the above, and pursuant to the South Carolina Uniform Declaratory Judgment Act, this court finds that the Revised Rules—as cited above and that in any way restrict the O’Haras from renting the unit lawfully or that discriminate against short-term rentals and/or tenants—are

unenforceable and are in violation of the Master Deed and the SCHPA. Further, this Court finds that Middleborough may not restrict the rights of the O’Haras or any Middleborough Co-Owners to lease their units as short-term rentals. The court further finds the O’Haras short-term lease of the Units constitutes a residential use under the Master Deed pursuant to South Carolina Law.

Additionally, pursuant to Master Deed and By-Laws, which contain no restrictions on the use of common areas, renters are entitled to the same use and enjoyment as a Co-Owner and Middleborough may not restrict Mr. O’Hara or any renters of Middleborough units from the full use and enjoyment of any of the common areas. The Revised Rules, particularly the sections as cited above defining residential use, restricting common area use, and limiting terms of lease, are not effective and may not be used to restrict the rights of the O’Hara’s, their renters, or other co-owners as they conflict with the SCHPA, the Master Deed and By-Laws and were not approved by the Co-Owners as required by the Master Deed.

AND IT IS SO ORDERED.

Signature Page to Follow



Richland Common Pleas

Case Caption: Kevin O'Hara , plaintiff, et al vs Middleborough Horizontal Property Regime , defendant, et al

Case Number: 2019CP4001231

Type: Order/Other

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

Electronically signed on 2021-03-03 15:00:56 page 15 of 15

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP4001231

Kevin O'Hara et al
PLAINTIFF(S)

Middleborough Horizontal Property Regime et al
DEFENDANT(S)

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.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ 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:

Defendant's Motion to Alter or Amend, filed 3/15/21, is denied.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/09/2021 .

Middleborough Horizontal Property Regime

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: 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 judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Richland Common Pleas

Case Caption: Kevin O'Hara , plaintiff, et al vs Middleborough Horizontal Property Regime , defendant, et al

Case Number: 2019CP4001231

Type: Order/Electronic Form 4

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

Electronically signed on 2021-04-09 15:35:58 page 3 of 3

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
Kevin O'Hara and Rebekah H. O'Hara,	)	
	)	
Plaintiff-Petitioner,	)	PETITION AND COMPLAINT
	)	FOR DECLARATORY JUDGMENT,
v.	)	PERMANENT INJUNCTION, AND
	)	DAMAGES
Middleborough Horizontal Property Regime,	)	
	)	
Defendant-Respondent.	)	
_____	)	

Kevin O'Hara and Rebekah O'Hara ("the O'Haras") complaining of the Defendants, Middleborough Horizontal Property Regime ("Middleborough") would show:

1. The O'Haras are citizens and residents of Richland County, South Carolina, and are the owners as Joint Tenants with the Right of Survivorship of apartment units 2J and 14G in the Middleborough Horizontal Property Regime.
2. Middleborough is a South Carolina Nonprofit corporation with its principal place of business in Richland County.
3. Middleborough is a horizontal property regime established pursuant to South Carolina Code Section 27-31-30 and its Master Deed, filed on November 12, 1981, and amended on December 21, 1984 (Exhibits A and B).
4. Middleborough is governed by the provisions of the South Carolina Horizontal Property Act (SCHPA) (S.C. Code Section 27-31-10 et. seq.), the Master Deed, its amendment, and the Bylaws of Middleborough Horizontal Property Regime (Exhibit C).
5. The Bylaws exist for the purpose governing the Middleborough Counsel of Co-Owners and the administration of Middleborough.

6. The O'Haras bought apartment 2J on March 31, 2015. (Exhibit D). Subsequently, The O'Haras bought apartment unit 14G on August 25, 2017. (Exhibit E). At the time the O'Haras purchased the units, it was their intent to rent them as short-term rentals through Airbnb and the like.

7. Airbnb and similar companies provide internet platforms through which people can find travel accommodations and enter into direct agreements with owners to rent on a short and long-term basis. These companies provide owners with screening services and a third-party payment processor to receive the rent payments.

8. The O'Haras told Middleborough's property management company of their intent to use the apartments for short-term rentals prior to buying the units.

9. At the time of the purchase and continuing afterwards, there were several apartments in Middleborough that were available for short-term rentals.

10. The purchases of both apartments were subject to the Master Deed, its amendment, and the SCHPA.

11. Section 27-31-100 of the SCHPA sets forth items that must be addressed in the Master Deed to establish the horizontal property regime. Section 27-31-100(h) provides that the Master Deed shall express "any restrictions or limitations on the lease of a unit including, but not limited to, the amount and term of the lease."

12. The Middleborough Master Deed does not set forth any restrictions or limitations regarding any aspect of an owner leasing a unit and specifically fails to place any restrictions on lease terms. Therefore, the owner can lease their units to tenants without restrictions regarding the length of the lease term.

13. The O'Haras have successfully leased their Middleborough apartment 2J since its purchase; and have the intention to do the same with apartment 14G. At all times, the O'Haras' apartments have been used for residential purposes only.

14. In Middleborough, tenants have the same access as co-owners to all of the common elements, such as the elevators, parking, building services, and the pool. There are no restrictions or limitations in the Master Deed for tenants' use of the common elements. The SCHPA requires any such restrictions to be set forth in the Master Deed.

15. On July 14, 2016, the president of the Middleborough Board of Directors, Lesesne Monteith, sent Mr. O'Hara a letter demanding that he "cease and desist" from renting Unit 2J on a short-term basis. (Exhibit F).

16. Mr. O'Hara responded to the letter and pointed out that there were no restrictions in the Master Deed relating to lease terms, that there had been no complaints regarding his tenants but he would be glad to meet with Mr. Monteith to address any issues. That invitation was declined.

17. Subsequently, the O'Haras did not hear from the board until October 2018, when Mr. O'Hara was informed by Bernadette Houghton, the current president of Middleborough, that the board intended to change the regime's rules in a way that would prohibit the O'Haras from the full and lawful use of their apartments.

18. Thereafter the Middleborough board approved revisions to the regime's rules and regulations on January 7, 2019. (Exhibit G)

19. The rule changes wrongfully and illegally attempt to restrict and limit the O'Haras' property rights as set forth in the Master Deed in the following ways:

- i. By defining "co-owner," "resident," "guest," and "tenant" in a manner not authorized by the Master Deed or the SCHPA. Specifically, the rule change defines a "guest"

as “a person whose mailing address is not that of any Middleborough unit and who is temporarily housed for any length of time in a co-owner’s or resident’s unit.” This change is intended to place short-term tenants in a category that is different from other renters, restrict Mr. O’Hara’s access to the property and the common elements, and to prevent the O’Haras from having the full legal use of their apartments.

- ii. It is a routine practice of co-owners and tenants to leave keys, or other personal items, with the Middleborough security guard to be picked up by their guests, children, tenants, or other visitors. The O’Haras often leave keys for their tenants with the security officer. The board changed the rule in Section XVIII.C. so that owners who rent out their units “must arrange for the transfer of unit keys, fobs, gate remotes, list of rental rules, and other rental accoutrements directly from the co-owner to the guest/renter.” Section XVIII.C. further states, “The security officer is not a hotel concierge and is prohibited from assisting renters by acting as an intermediary.” With this rule change, the board is specifically singling out the practice of leaving keys for short-term renters.
- iii. Section VIII “Common Areas – Swimming Pool”—wrongfully attempts to deprive Mr. O’Hara of the right for his tenants to use the swimming pool in the same manner as other tenants. No such limitation is listed in the Master Deed; and therefore, these rules are not enforceable, and the board passed them in bad faith. The same restriction is attempted in Section XVIII.E.
- iv. Section XVII.G. states “Accommodation rentals are prohibited, and residential units may only be used for residential purposed.” This section violates the SCHPA, as no such restriction is set forth in the Master Deed.

- v. Section XXI purports to prohibit rentals of units for less than thirty days and sets a fine of ten dollars per day for violations. This section violates the SCHPA, as no such restriction on lease terms is set forth in the Master Deed.
20. Any fines levied for violations of the rules above and left unpaid result in a lien on the property and a possibility of foreclosure.
21. At all times, the O'Haras' rentals of the apartments have complied with all applicable laws, regulations, and property restrictions.
22. The Defendant's actions, as set forth above, are all in violation of the O'Haras' right to the full use and enjoyment of their property pursuant to the rights granted to them by the SCHPA and the Master Deed.
23. The Defendant's actions are preventing and will prevent the O'Haras from renting the units as they planned.
24. The Defendant's actions will prevent the O'Haras' tenants from enjoying the common areas, including the pool, in the same manner as tenants leasing for longer periods.
25. The O'Haras will likely prevail on the merits because the Defendant cannot place any limitations or restrictions on leases that are not set forth in the Master Deed as required by the SCHPA.
26. The O'Haras will suffer irreparable harm by virtue of the Defendant's unlawful acts in that the O'Haras will not be able to rent the property as they intended, at rental rates that exceed the amount brought by a long-term rental in Middleborough. By applying restrictions on the lease term, which are not set forth in the Master Deed, the Defendant is denying the O'Haras the full and complete enjoyment of their property.

27. The O’Haras will have no adequate remedy at law if the Defendant is permitted to improperly prohibit and interfere with the O’Haras’ ability to lease their apartments on short-term rentals.

28. The equities favor the O’Haras in that they will be irreparably injured if they cannot have the full and complete use of their property without interference from the Defendant, but Middleborough will suffer no harm as the relief sought is merely seeking to require Middleborough to follow its Master Deed.

29. The O’Haras are entitled to an injunction order requiring Middleborough to drop the enforcement of any rules that attempt to restrict rental terms and that restrict lawful tenant’s rights to the common areas whether outright or by contrived mechanisms of “passes” or “fobs.”

30. The O’Haras are also entitled to a declaratory judgement from this Court declaring the Revisions to the Rules and Regulations of Middleborough—as cited above and that in any way restrict the O’Haras from renting the unit lawfully or that discriminate against short-term tenants—are unenforceable and are in violation of the Master Deed and the SCHPA.

31. Further, the O’Haras, pending a hearing on the merits, are entitled to a temporary restraining order and preliminary injunction allowing the O’Haras to continue leasing their units on a short-term basis and allowing their tenants to use the common areas in the same manner as all residents of Middleborough.

WHEREFORE, Petitioner prays for an Order restraining and enjoining Middleborough from prohibiting the O’Haras from renting their units on short-term leases and interfering with the O’Haras tenants’ rights to use the common areas in the same manner as all other co-owners or tenants and otherwise violating the Master Deed regarding any restrictions on the O’Haras’ leases not set forth in the Master Deed. Pending a hearing on the merits of this Petition, Petitioner prays

for a temporary restraining order and preliminary injunction restraining and enjoining Middleborough from unlawfully prohibiting the O'Haras and their tenants the full and lawful use of the unit and the common elements in any manner different from that of other co-owners or tenants as allowed by the Master Deed. The Petitioner further prays that this Court enter a declaratory judgment declaring that any restrictions or limitations on leases not specifically set forth in the Master Deed are not enforceable, and are a violation of law, including limitations as to the use of the common areas, the security guard, and other assets of the property in a manner different from that of all other co-owners and tenants, and that the O'Haras may continue to lease their property as short-term rentals and that their tenants may enjoy the property in the same manner as other residents.

BRUNER, POWELL, WALL & MULLINS, LLC

s/ Wesley D. Peel

Wesley D. Peel, S.C. Bar No.: 9283

Abigail A. Carson, S.C. Bar No.: 103150

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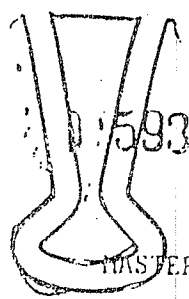
(803)252-7693

Attorneys for Plaintiff-Petitioner

Columbia, South Carolina

February 28, 2019

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)



593 PAGE 92

MASTER DEED

MIDDLEBOROUGH

HORIZONTAL PROPERTY REGIME
(An Expandable Regime)

THIS MASTER DEED made by Middleborough, A Limited Partnership ("Grantor"), pursuant to the Horizontal Property Act of South Carolina (the "Act") for the purpose of creating a horizontal property regime and establishing certain easements, covenants and restrictions to run with the land,

WITNESSETH:

ARTICLE I

THE PROPERTY

A. Property. As used herein, the term "Property" means and includes the land hereinafter identified and all improvements and structures now existing or hereafter placed thereon by Grantor and all easements, rights and appurtenances belonging thereto, excluding only those portions of the land and improvements reserved to Grantor for additional Phases II, III and IV.

B. Land. The land ("Land") which is subject to this Master Deed is that certain tract or parcel described in Exhibit "A" attached hereto and consisting of 5.28 acres, excluding only those portions of the Land and Property reserved to Grantor for additional Phases II, III and IV. The Land is owned by Grantor in fee simple and is more particularly described and delineated on the plat recorded in Plat Book X at page 2075 in the office of the R. M. C. for Richland County, South Carolina.

C. Phase I Apartments. Grantor has constructed as part of the Property an eighteen (18) story building covering a total ground area (at grade) of 14,870 square feet and containing a total of 192 residential apartments ("Apartments") and a three (3) deck parking garage covering a total ground area (at grade) of 22,685 square feet, all as shown on the plans and specifications titled "Middleborough High Rise Apartments Federal Housing Administration Project No. 054-00084 SEC. 207 prepared by Love & Cobb Architects and Reed, Fleming & Associates, Inc., Engineers, Columbia, S.C. dated April 3, 1972, as revised, which plans and specifications are incorporated herein by reference. The Apartments consist of 6 types as follows:

Type A. A one-bedroom apartment containing 800 square feet of interior area;

Type B. A two-bedroom apartment containing 1010 square feet of interior area;

Type C. A two-bedroom apartment containing 1050 square feet of interior area;

Type D. A two-bedroom apartment containing 1100 square feet of interior area;

Type E. A two-bedroom apartment containing 1125-1160 square feet of interior area; and

Type F. A three-bedroom apartment containing 1375 square feet of interior area.

Certain types of Apartments exist in two configurations, each of which is the approximate mirror image of the other and Type E apartments contain either 1125 or 1160 square feet as noted. The Apartments are more particularly

described as to number, location, type and configuration on the Plot Plan, the floor plans (the "Floor Plans") of the Apartments filed for record herewith as Exhibits "B-1" through "B-19" attached hereto. Each Apartment encompasses and includes all that portion of the building designated on the Floor Plans as an Apartment and consisting of all living and storage space bounded by the upper surface of the floor slab, by the unexposed surfaces of the drywall or plastering forming interior walls and ceilings, and by the exterior surfaces of windows and window frames and of exterior doors and the door frames; and all flooring, floor covering, tile, plaster, wall board, paint, wall covering, doors, door frames, windows, window frames, cabinets, fixtures, appliances and other building materials within the space so bounded. Each Apartment also includes the heating, air conditioning and ventilating equipment and the ducting, electrical wiring and water and sewer pipes serving such Apartment exclusively, regardless of where situated. The balcony or balconies adjacent to and immediately accessible from an Apartment and screens covering the doors or windows of an Apartment are also part of the Apartment.

D. Common Elements. All portions of the Property not encompassed and included within the various Apartments are part of the common elements (the "Common Elements") of the Property. The Common Elements consist of General Common Elements as hereinafter described.

E. General Common Elements. The General Common Elements include the following:

1. The Land;
2. The foundation, main walls, roof (as now existing or as replaced upon completion and merger of Phase III), halls, reception area, fire stairs, and entrance and exit or communication ways of the building;
3. The compartments or installations of central services such as power, light, refrigeration, reservoirs, water tanks and pumps and the like;
4. The elevators and, in general, all devices or installations existing for common use; and
5. All other elements of the Property rationally of common use or necessary to its existence, upkeep and safety.

F. Values. The value of the Property is \$12,075,200.00, and the value of each individual Apartment is as shown on Exhibit C attached hereto and hereby made a part hereof. The values shown on Exhibit C are fixed for the sole purpose of complying with the Horizontal Property Act and irrespective of the actual values, and shall not prevent Grantor or each Co-owner from fixing a different circumstantial value to his Apartment in all types of acts and contracts.

G. Ownership of Common Elements. Ownership of the Common Elements is apportioned among and appurtenant to the individual Apartments according to the percentages set forth on Exhibit C. The percentage of the undivided interest in the Common Elements shall not be separated from the Apartment to which it appertains and shall be deemed to be conveyed or encumbered with the Apartment even though such interest is not expressly mentioned or described in the deed or other instrument of conveyance. Said percentage also shall not be altered without the acquiescence of all the Co-owners except as provided in Article V, upon the addition of Phases II, III and/or IV or any of them.

I. Name. The name by which the horizontal property regime shall be known is "Middleborough Horizontal Property Regime" (hereinafter sometimes called "Regime").

ARTICLE II

THE COUNCIL

A. Members. Every Co-owner, as hereinafter defined, shall be a member of and constitute the council of Co-owners (the "Council"), an unincorporated association which shall be managed by a board of administration (the "Board of Directors") elected by and from the Co-owners and by a professional management company (the "Manager") if the Board of Directors or the Council so elect.

D. Co-owner. As used herein, the term "Co-owner" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns an Apartment.

C. Bylaws. The Council and the administration of the Property shall be governed by the bylaws (the "Bylaws") annexed hereto as Exhibit D. The Bylaws may be modified or amended only in the manner set forth in Article IX hereof.

D. Voting. On all matters relating to the Council or to the Property upon which a vote of the Co-owners is conducted, the Co-owners shall vote in proportion to their respective percentage interests in the Common Elements so that there shall be appurtenant to each type of Apartment one vote (or percentage thereof) equal to the percentage ownership attributable to such Apartment. The total number of votes appurtenant to all Apartments is 100. The affirmative vote of a Majority of the Co-owners, as hereinafter defined, shall be required to adopt decisions. All votes attributable to a single Apartment must be cast together and may not be split.

E. Majority of the Co-owners. Whenever used in this Master Deed or the Bylaws, the term "Majority of the Co-owners" means Co-owners entitled to cast a total of more than 50 votes.

F. Interim Rights of Grantor. Notwithstanding anything to the contrary in this Master Deed or the Bylaws, until 120 days after Grantor or its successor in interest owns fewer than twenty-five (25 %) percent of the Apartments of Phase I or until the passage of three (3) years from the date of recording this Master Deed, whichever first occurs, there shall be not more than three (3) directors and Grantor or its successors shall be entitled to designate two (2) of such directors, and any successor to such director, all as is provided in the Bylaws.

ARTICLE III

COMMON EXPENSES

A. Liability of Co-owners. The Co-owners of the Apartments are bound to contribute in proportion to their respective interests in the Common Elements toward the following expenses ("Common Expenses"):

1. Expenses of administration and of maintenance and repair of the General Common Elements and, in proper cases, of the Limited Common Elements; and

2. Any other expense lawfully agreed upon by the Council.

The liability of each Co-owner for the Common Expenses shall be limited to the amounts for which he is assessed from time to time in accordance with the Horizontal Property Act, this Master Deed and the Bylaws. No Co-owner may exempt himself from contributing toward the Common Expenses by waiver of the use or enjoyment of the Common Elements or by abandonment of his Apartment. Monthly assessments shall commence and be due and payable upon the recordation of this Master Deed.

B. Liability of Purchaser. The purchaser of an Apartment (other than a purchaser at a foreclosure sale as described below in paragraph E) shall be jointly and severally liable with the seller pursuant to paragraph A above up to the time of the conveyance, without prejudice to the purchaser's right to recover from the seller the amounts paid by the purchaser as such joint debtor. The Council shall provide for the issuance and shall issue to any purchaser, upon his request, a statement of such amounts due by the seller of any Apartment, and the purchaser's liability under this paragraph shall be limited to the amount as set forth in the statement.

C. Sale of Apartment. Upon the sale or conveyance of an Apartment, all unpaid assessments against a Co-owner for his pro rata share of the Common Expenses shall first be paid out of the sales price or by the acquirer in preference over any other assessments or charges of whatever nature except the following:

1. Assessments, liens and charges for taxes past due and unpaid on the Apartment; and

2. Payments due under mortgage instruments or encumbrances duly recorded prior to the time the assessments for Common Expenses became payable.

D. Lien on Apartment. All sums assessed by the Manager or the Board of Directors for the share of the Common Expenses chargeable to any Apartment shall constitute a lien on such Apartment prior and superior to all other liens except only (i) tax liens on the Apartment in favor of any assessing unit, and (ii) mortgage and other lien encumbering the Apartment, duly recorded prior to the time the assessment for such Common Expenses became payable. Such lien may be foreclosed by suit by the Manager or the Board of Directors, acting on behalf of the Council, in like manner as a mortgage of real property. In any such foreclosure the Co-owner of the Apartment shall be required to pay a reasonable rental for the Apartment after the commencement of the foreclosure action, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same. The Manager or the Board of Directors, acting on behalf of the Council, shall have power to bid in the Apartment at any foreclosure sale and to acquire, hold, lease, mortgage, encumber and convey the same. Suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or waiving the lien securing the same.

E. Foreclosure Purchaser. Where the mortgagee of any mortgage of record or other purchaser of an Apartment obtains title to the Apartment as a result of foreclosure of such mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of the Common Expenses or assessments by the Co-owners chargeable to such Apartment accruing after the date of recording such mortgage but prior to the acquisition of title to such Apartment by such acquirer. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all of the Co-owners, including such acquirer, his successors and assigns.

F. Records. The Manager of the Board of Directors shall keep, or cause to be kept, a book with a detailed account, in chronological order, of the receipts and expenditures affecting the Property and its administration and specifying the maintenance and repair expenses of the Common Elements and any other expenses incurred. Both the book and the vouchers accrediting the entries made thereupon shall be available for examination by all the Co-owners or mortgage holder or insurer at convenient hours on working days that shall be set and announced for general knowledge.

ARTICLE IV

EASEMENTS, COVENANTS AND RESTRICTIONS.

A. Use of Property. Each Co-owner shall be entitled to the exclusive ownership and possession of his Apartment and may use the Common Elements in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of other Co-owners.

B. Utility Easements. There shall be appurtenant to each Apartment a non-exclusive easement for use of all pipes, wires, cables, conduits, utility lines, flues and ducts serving such Apartment and situated in any other Apartment. Each Apartment shall be subject to an easement in favor of other Apartments for use of all pipes, wires, cables, conduits, utility lines, flues and ducts situated in such Apartments and serving such other Apartments.

C. Encroachments. If any portion of the Common Elements now encroaches upon any Apartment, or if any Apartment now encroaches upon any other Apartment or upon any portion of the Common Elements, or if any such encroachment shall occur hereafter as a result of (i) settling of an Apartment or Apartments; (ii) repair, alteration or reconstruction of the Common Elements made by or with the consent of the Council; (iii) repair or reconstruction of an Apartment or Apartments following damage by fire or other casualty; or (iv) 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 Horizontal Property Act.

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D. Right of Access. The Council shall have the irrevocable right, to be exercised by the Manager or the Board of Directors, to have access to each Apartment from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Apartment.

E. Maintenance of Common Elements. The necessary work of maintenance, repair and replacement of the Common Elements and the making of any additions or improvements thereto shall be carried out only as provided in the Horizontal Property Act, this Master Deed and the Bylaws.

F. Prohibited Work. No Co-owner shall do any work which would jeopardize the soundness or safety of the Property, reduce the value thereof or impair any easement or hereditament without in every such case unanimous consent of all other Co-owners affected being first obtained.

G. Partition. The Common Elements shall remain undivided and shall not be the object of an action for partition or division of the co-ownership. Any covenant to the contrary shall be void.

ARTICLE V

MERGER OF ADDITIONAL PHASES

A. Additional Property. This is an expandable project. Portions of the grounds, the first floor, the basement and the roof of the building containing the Apartments hereby subjected to the Act, which are identified in Exhibit A as "Reserved to Grantor For Future Use" are excluded from the Middleborough Horizontal Property Regime by Grantor. In the future Grantor may wish to expand this Regime by adding such additional property (modified or constructed as additional apartments, commercial space or penthouses) in one or more Phases as hereinafter described. The maximum number of additional units which may be annexed to the Regime established hereby shall not exceed thirty-six (36) apartment units or commercial units in the aggregate on the first floor and basement (Phase II); twelve (12) penthouse apartment units constructed on the roof of the building (Phase III); and, additional construction of a building or buildings containing not more than thirty-six (36) units on the reserved forty-two one hundredths (.42) acre located at the southwestern corner of the Land (Phase IV). The aggregate, total maximum square footage for Phases II, III and IV, which Grantor may add to this Regime shall not exceed 85,771 square feet and the aggregate total value of the additional property (determined solely for purposes of complying with the Act) shall not exceed \$5,282,900. Any additional apartment or commercial units shall be constructed of equal or superior quality to those subjected to this Regime in this Phase I and shall be substantially completed prior to annexation to this Phase I.

B. Amendments to Master Deed. In the event Grantor, in its sole discretion, elects to proceed to enlarge this Regime by adding Phase II, Phase III or Phase IV, or any of them, in any order, or parts of any of them, in any order, Grantor shall execute an amendment or amendments to this Master Deed which shall be filed for record in the R.M.C. Office for Richland County, South Carolina not later than seven (7) years from the date of recording this Master Deed. Any such amendment or amendments shall fully describe the property being added to this Regime and submit such property to all of the provisions of this Master Deed and exhibits attached hereto, as amended. Such amendment or amendments expanding this Regime, as aforesaid, may be accomplished unilaterally by Grantor without the approval or consent of any Co-owner, or mortgagee of any Co-owner, of the Regime as constituted at the time of such amendment. Upon exercise of any such option to expand, as aforesaid, the provisions of this Master Deed shall then be understood and construed as embracing Phase I property and such property as may be described in such amendment, together with all improvements constructed thereon.

C. Reversion of Additional Property to Regime. Should the expansion options not be exercised within the time specified, they shall in all respects expire and be of no further force and effect and/or should Grantor earlier declare his intention to release such reserved property to this Regime by amendment recorded as aforesaid, then the property so reserved to Grantor shall become and be deemed thereafter to be part of the Common Elements.

16 PAGE 97
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D. Rights and Obligations of New Co-owners. Immediately upon recording the amendment or amendments adding an additional Phase or Phases, or any part thereof, Co-owners of Apartments or commercial space within such property shall assume all rights and obligations which Co-owners of Phase I may have hereunder and shall bear their proportionate share of the common expenses payable by existing Co-owners, and the percentage ownership of existing Co-owners in common areas shall change in direct proportion to the percentage that the value of the additional property (determined solely for purposes of complying with the Act to be \$61.59 per square foot of interior area) bears to the sum of the value of the property hereby subjected to condominium ownership and the value of the additional property.

E. Elevator Service to Phase III. As part of the additional phase encompassing the proposed penthouse apartment units (Phase III), Grantor reserves the right to add to the interior or exterior of the building elevator service to the penthouse apartment units and/or to extend the existing elevator service to the penthouse apartment units.

F. Replacement of Tennis Court in Phase IV. As part of the horizontal property regime encompassing the proposed new construction of Apartments in Phase IV, Grantor would necessarily use the property where the existing tennis court is located. Prior to beginning construction on such property Grantor shall build or cause to be built, at its sole expense, a tennis court of similar quality on the existing garage or if Grantor elects not to build, or is unable to build on the existing garage, on another portion of the Common Elements designated by the Directors of the Council of Co-owners.

G. Reservation of Construction and Maintenance Easement. As part of the reservation of the option in Grantor to add additional property to this Regime, Grantor reserves unto itself, and its successors and assigns, easements for ingress and egress over, under and across all Common Elements and such other reasonable right of access to and use of the Common Elements subjected to this Regime as may be necessary for the construction, maintenance and marketing of the additional Apartment units or commercial units.

H. Taxes and Assessments Prior to Merger. Prior to filing any amendment to this Master Deed adding additional property to this Regime, Grantor shall be responsible for all taxes and other assessments relating to the property reserved to Grantor.

ARTICLE VI

LIENS

A. Attachment. No lien arising subsequent to the recording of this Master Deed, and while the Property remains subject to the Horizontal Property Act, shall be effective against the Property. During such period, liens or encumbrances shall arise or be created only against each Apartment and the percentage of undivided interest in the Common Elements appurtenant to such Apartment 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 furnished with the consent or at the request of a Co-owner or his agent or his contractor or subcontractor shall be the basis for the filing of a mechanic's or materialman's lien against the Apartment or any other property of any other Co-owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by the Co-owner of any Apartment in the case of emergency repairs thereto. Labor performed or materials furnished for the Common Elements, if duly authorized by the Council, the Manager or the Board of Directors in accordance with the Horizontal Property Act, this Master Deed or the Bylaws, shall be deemed to be performed or furnished with the express consent of each Co-owner, and shall be the basis for the filing of a mechanic's or materialman's lien against each of the Apartments and shall be subject to the provisions of paragraph B below.

B. Discharge. In the event a lien against two or more Apartments becomes effective, the Co-owners of the separate Apartments may remove their Apartments and the percentage of undivided interest in the Common Elements appurtenant to such Apartments from the lien by any payment of the fractional or proportional amounts attributable to each of the Apartments affected. Such

individual payment shall be computed by reference to the percentages appearing in this Master Deed. Subsequent to any such payment, discharge or other satisfaction, the Apartment 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 rights against any Apartment and the percentage of undivided interest in the Common Elements appurtenant thereto not so paid, satisfied or discharged.

C. Taxes. Taxes, assessments and other charges of this State, or of any political subdivision, or of any special improvement district, or of any other taxing or assessing authority shall be assessed against and collected on each individual Apartment, each of which shall be carried on the tax books as a separate and distinct entity for that purpose, and not on the buildings or Property as a whole. No forfeiture or sale of the buildings or Property as a whole for delinquent taxes, assessments or charges shall ever divest or in anywise affect the title to an individual Apartment so long as taxes, assessments and charges on the individual Apartment are currently paid.

ARTICLE VII

INSURANCE

The Council shall insure the Property against risks, without prejudice to the right of each Co-owner to insure his Apartment on his own account, for his own benefit.

ARTICLE VIII

RECONSTRUCTION

A. When Required. In case of fire or any other disaster, the indemnity from any insurance obtained by the Council shall, except as hereinafter provided, be applied to reconstruct the Property. Reconstruction shall not be compulsory where it comprises the whole or more than two-thirds (2/3) of the Property. In such case, and unless otherwise unanimously agreed upon by the Co-owners, the indemnity shall be delivered pro rata to the Co-owners entitled to it in accordance with the provision made in the Bylaws or in accordance with the decision of three-fourths (3/4) of the Co-owners if there is no Bylaws provision. Should it be proper to proceed with the reconstruction, the provision for such eventuality made in the Bylaws shall be observed, or, in lieu thereof, the decision of the Council shall prevail.

B. Costs. Where the Property is not insured or where the insurance indemnity is insufficient to cover the cost of reconstruction, the rebuilding costs shall be paid by all the Co-owners directly affected by the damage, in proportion to the value of their respective Apartments, or as may be provided in the Bylaws; and if any one or more of those composing the minority shall refuse to make such payment, the majority may proceed with the reconstruction at the expense of all the Co-owners benefited thereby, upon proper resolution setting forth the circumstances in the case and the cost of the work, with the intervention of the Council. The provisions of this paragraph may be changed by the unanimous resolution of the parties concerned, adopted subsequent to the date on which the fire or other disaster occurred.

ARTICLE IX

AMENDMENTS

A. Master Deed. Except as provided in Article V which provides for Amendments by Grantor to add additional Phases, this Master Deed may be amended only by written agreement of all the Co-owners.

B. Bylaws. The Bylaws may be amended from time to time by the affirmative vote of Co-owners entitled to cast a total of no fewer than 75 votes.

C. Recording. No amendment to this Master Deed or the Bylaws shall be effective unless and until recorded as required by the Horizontal Property Act.

Change Deed
Master Deed
100% Co-owners

ARTICLE X

MISCELLANEOUS

U 593 PAGE 99

A. Application. All Co-owners, tenants of Co-owners, employees of Co-owners and tenants, or any other persons that may in any manner use the Property or any part thereof shall be subject to the Horizontal Property Act and to this Master Deed and the Bylaws.

B. Compliance. Each Co-owner shall comply strictly with the Bylaws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions, and restrictions set forth in this Master Deed or in the deed to the Apartment of such Co-owner. Failure to comply with any of the same shall be ground for a civil action to recover sums due for damages or injunctive relief, or both, maintainable by the Manager or the Board of Directors on behalf of the Council or, in a proper case, by an aggrieved Co-owner.

C. Waiver. No provision 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.

D. Conflicts. This Master Deed is executed to comply with the requirements of the Horizontal Property Act, and in the event that any of the provisions hereof conflict with the provisions of the Horizontal Property Act, the Horizontal Property Act shall control.

E. 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.

F. 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 provision hereof.

G. 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.

H. Termination. All the Co-owners or the sole Co-owner of the Property may waive the horizontal property regime and regroup or merge the records of the Apartments with the Common Elements, provided that the Apartments are unencumbered or, if encumbered, that the creditors on whose behalf the encumbrances are recorded agree to accept as security the undivided portions of the Property owned by the debtors.

IN WITNESS WHEREOF, Grantor has executed this Master Deed this 14th day of OCTOBER, 1981.

Signed, sealed and delivered
in the presence of:

William C. Boyer
Witness

Harry A. Moise
Witness

Middleborough, A Limited Partnership

By: Park Tower, Inc., its General Partner

By: Paul E. Pincus
its VICE-PRESIDENT
and William J. Clary
its SECRETARY

U 593 PAGE 99

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

PROBATE

D 593 PAGE 100

Before me, the undersigned notary public, appeared HENRY L. MOISE, who being duly sworn, said that he saw Middleborough, a Limited Partnership by Park Tower, Inc., its General Partner by PAUL E. PINSON its VICE-PRESIDENT and WILLIAM J. CLEARY its SECRETARY attest and seal the same, and said partnership, by said General Partner, deliver said Master Deed as its act and deed, and that HE he with WILLIAM C. BOYD, JR. witnessed the same.

SWORN to before me this the
14th day of OCTOBER, 1981

William C. Boyd, Jr.
Notary Public for South Carolina

My Commission Expires 8/16/89

Henry L. Moise

D 593 PAGE 100

ED 722-551



6.00

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

AMENDMENT TO MASTER DEED OF
MIDDLEBOROUGH HORIZONTAL
PROPERTY REGIME

FILED
REGISTER OF DEEDS - COMMON PLEAS
CLARK, L. B. JR.

1984 DEC 21 PM 1:35

THIS AMENDMENT TO MASTER DEED, executed this 21st day of December, 1984, by Middleborough, A Limited Partnership ("Grantor").

WITNESSETH:

WHEREAS, Grantor established that certain horizontal property regime located in Richland County, South Carolina, known as Middleborough Horizontal Property Regime (the "Regime") by executing and recording that certain master deed (the "Master Deed") dated October 14, 1981, and recorded in the Office of the R.M.C. for Richland County, South Carolina, in Deed Book D593 at Page 92; and

WHEREAS, Article V of the Master Deed provides for merger, at the option of Grantor, of additional phases into the Regime, including, but not limited to, adding to the Regime the ground floor of the building in which the Regime is located; and

WHEREAS, Grantor desires to add the ground floor of the aforesaid building to the Regime as residential and commercial Apartments pursuant to the terms of the Master Deed and as further provided hereinbelow.

NOW, THEREFORE, pursuant to its rights to expand the Regime by adding additional phases thereto in accordance with and pursuant to the terms of the Master Deed, Grantor does hereby amend the Master Deed as follows:

1. Addition to Regime. Grantor hereby adds to the Regime the real property consisting of the ground floor of the Regime building, with the exception of such portions of the ground floor as are already common elements of the Regime. The portion of the ground floor added to the Regime hereby is more specifically described and shown as Apartments G-1, G-2, G-3, G-4, G-5 and G-6 on the floor plan (the "Floor Plan") of the ground floor attached hereto as Exhibit A and hereby made a part hereof (the portion of the ground floor added to the Regime shall be referred to hereinafter as the "Phase II-A Apartments"). The Phase II-A Apartments are hereby submitted to all of the provisions of the Master Deed and the exhibits attached thereto, as such may have been amended or may be amended from time to time. Grantor, for itself and its successors and assigns, hereby assumes as fee simple owner of the Phase II-A Apartments all rights and obligations of a Co-Owner under the Regime.

2. Use of Phase II-A Apartments. All Phase II-A Apartments may be used for residential purposes, including, but not limited to, rental residential space, or any commercial purpose allowed by applicable law, including, but not limited to, use of such Apartments as commercial retail space or commercial office space.

3. Number and Description of Phase II-A Apartments; Percentage Interest in Common Elements.

(a) The Phase II-A Apartments shall consist of six (6) Apartments designated as Apartment Unit Nos. G-1, G-2, G-3, G-4, G-5 and G-6 of the Regime. The Phase II-A Apartments are more particularly described as to number, location, type and configuration on the Floor Plan. Each Phase II-A Apartment encompasses and includes all that portion of the building designated on the Floor Plan as an Apartment and consisting of all living and storage space bounded by the upper surface of the floor slab, by the unexposed surfaces of the drywall or plastering forming interior walls and ceilings, and by the exterior surfaces of windows and window frames and of exterior doors and the door frames; and all flooring, floor covering, tile, plaster, wall board, paint, wall covering, doors, door frames, windows, window frames, cabinets, fixtures, appliances and other building materials within the space so bounded. Each Phase II-A Apartment also includes the heating, air conditioning and ventilating equipment and the ducting, electrical wiring and water and sewer pipes serving such Apartment exclusively, regardless of where situated. The

ED 722-551

R-35

exterior court adjacent to a Phase II-A Apartment and screens covering the doors or windows of a Phase II-A Apartment are also part of the Phase II-A Apartment.

(b) The value of the Regime property including the Phase II-A Apartments is \$12,460,137.50, and the value of the Phase II-A Apartments and all other Apartments is as shown on Exhibit B attached hereto and hereby made a part hereof. The values shown on Exhibit B are fixed for the sole purpose of complying with the South Carolina Horizontal Property Act and irrespective of the actual values, and shall not prevent Grantor or each Co-Owner from fixing a different circumstantial value to his Apartment in all types of acts and contracts.

(c) Ownership of the Common Elements with the addition of the Phase II-A Apartments is apportioned to the individual Apartments according to the percentages set forth on Exhibit B.

3. Apartment Entrances. Each Phase II-A Apartment fronts on the ground level of the southeastern side of the Regime building. Some Phase II-A Apartments have existing doors to the outside of the Regime building and some Phase II-A Apartments have only exterior glass walls. The Owner of each Phase II-A Apartment shall have the option at any time, at his own expense, to cut one (1) or more doors to the outside on the southeastern side of the Regime building for each Phase II-A Apartment, provided that such doors shall be designed in keeping with the existing design and appearance of the exterior of the Regime building.

4. Additional Phases. The Master Deed provides for the addition to the Regime of Phase II, which would include both the ground floor, herein designated the Phase II-A Apartments, and the first floor of the Regime building. Pursuant to Article V of the Master Deed, which provides in part that Grantor may elect to add Phase II, Phase III or Phase IV, or parts of any of them, Grantor has elected to add only the portion of Phase II described hereinabove as the Phase II-A Apartments to the Regime at this time. Grantor reserves its rights under the Master Deed to add the remainder of Phase II, as well as Phase III and Phase IV, or any part of any of them, to the Regime in accordance with the terms of the Master Deed, and no provision hereof shall be deemed a modification or waiver of such rights.

5. Miscellaneous. Except as otherwise provided herein, the terms used herein have the same meaning as provided in the Master Deed. Except as modified hereby, the terms and provisions of the Master Deed are incorporated herein by reference.

IN WITNESS WHEREOF, Grantor has executed this Amendment to Master Deed on the date first above written.

Signed, Sealed and Delivered
in the Presence of:

Middleborough, A Limited Partnership

By: Park Tower, Inc., Its General Partner

By:

Its

William H. Sherry
Vice-President

(CORPORATE SEAL)

John R. Smith
Debra J. Williams

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ED 722 PAGE 553

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

PROBATE

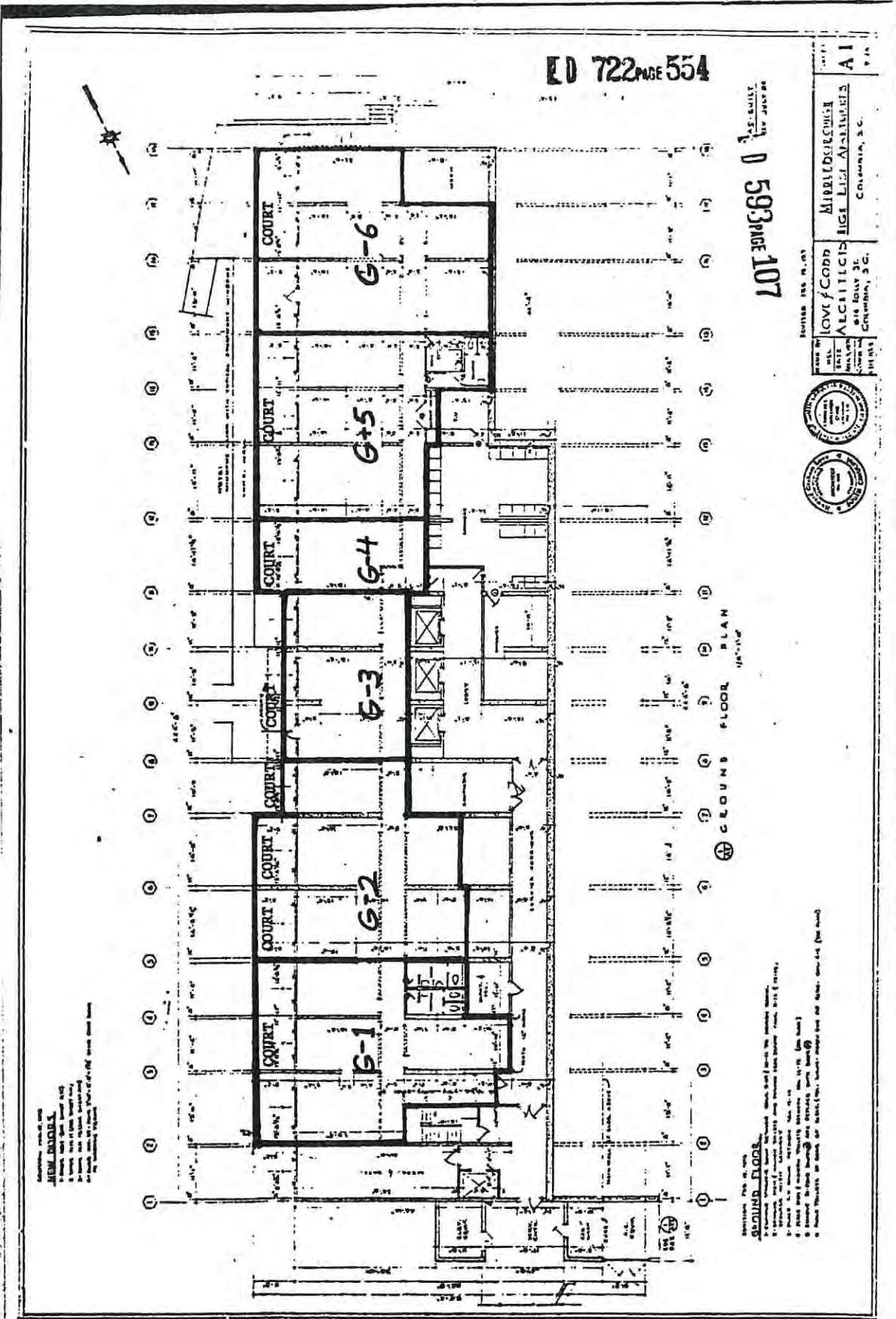
Before me, the undersigned notary public, personally appeared Benton D. Williamson, who, being sworn, deposed and said that he saw Middleborough, A Limited Partnership, by Park Tower, Inc., Its General Partner, by William H. Thoms its Vice President, sign, seal and deliver the foregoing Amendment to Master Deed and that _____ he, together with John B. McArthur, witnessed the execution thereof.

SWORN TO and subscribed
 before me this 26 day
 of December, 1984.



John B. McArthur (SEAL)
 Notary Public for South Carolina
 My commission expires 2/1/92

ED 722 PAGE 553



ED 722 PAGE 555

Apartment #	Assigned Value	Percentage Interest In Common Elements Expressed As A Percentage	Apartment #	Assigned Value	Percentage Interest In Common Elements Expressed As A Percentage
2A	\$55,800	.44783	6A	\$57,800	.46388
2B	60,300	.48394	6B	62,300	.49999
2C	58,925	.47291	6C	60,925	.48896
2D	58,925	.47291	6D	60,925	.48896
2E	60,300	.48394	6E	62,300	.49999
2F	42,500	.34109	6F	44,500	.35714
2G	42,500	.34109	6G	44,500	.35714
2H	62,275	.49979	6H	64,275	.51585
2I	58,400	.46869	6I	60,400	.48475
2J	58,400	.46869	6J	60,400	.48475
2K	62,275	.49979	6K	64,275	.51585
2L	67,500	.54173	6L	69,500	.55778
3A	56,300	.45184	7A	58,300	.46789
3B	60,800	.48796	7B	62,800	.50401
3C	59,425	.47692	7C	61,425	.50100
3D	59,425	.47692	7D	61,425	.50100
3E	60,800	.48796	7E	62,800	.50401
3F	43,000	.34510	7F	45,000	.36115
3G	43,000	.34510	7G	45,000	.36115
3H	62,775	.50381	7H	64,775	.51986
3I	58,900	.47271	7I	60,900	.48876
3J	58,900	.47271	7J	60,900	.48876
3K	62,775	.50381	7K	64,775	.51986
3L	68,000	.54754	7L	70,000	.56179
4A	56,800	.45585	8A	58,800	.47190
4B	61,300	.49197	8B	63,300	.50802
4C	59,925	.48093	8C	61,925	.49698
4D	59,925	.48093	8D	61,925	.49698
4E	61,300	.49197	8E	63,300	.50802
4F	43,500	.34911	8F	45,500	.36516
4G	43,500	.34911	8G	45,500	.36516
4H	63,275	.50782	8H	65,275	.52387
4I	59,400	.47672	8I	61,400	.49277
4J	59,400	.47672	8J	61,400	.49277
4K	53,275	.50782	8K	65,275	.52387
4L	68,500	.54975	8L	70,500	.56580
5A	57,300	.45987	9A	59,300	.47592
5B	61,800	.49598	9B	63,800	.51203
5C	60,425	.48495	9C	62,425	.50100
5D	60,425	.48495	9D	62,425	.50100
5E	61,800	.49598	9E	63,800	.51203
5F	44,000	.35313	9F	46,000	.36918
5G	44,000	.35313	9G	46,000	.36918
5H	63,775	.51183	9H	65,775	.52788
5I	59,900	.48073	9I	61,900	.49678
5J	59,900	.48073	9J	61,900	.49678
5K	63,775	.51183	9K	65,775	.52788
5L	69,000	.55377	9L	71,000	.56982

ED 722 PAGE 555

Apartment #	Assigned Value	Common Elements Expressed As A Percentage	Apartment #	Assigned Value	Common Elements Expressed As A Percentage
10A	\$60,100	.48234	15A	\$65,700	.52728
10B	64,600	.51845	15B	70,200	.56340
10C	63,225	.50742	15C	68,825	.55236
10D	63,225	.50742	15D	68,825	.55236
10E	64,600	.51845	15E	70,200	.56340
10F	46,800	.37560	15F	52,400	.42054
10G	46,800	.37560	15G	52,400	.42054
10H	66,575	.53430	15H	72,175	.57925
10I	62,700	.50320	15I	68,300	.54815
10J	62,700	.50320	15J	68,300	.54815
10K	66,575	.53430	15K	72,175	.57925
10L	71,800	.57624	15L	77,400	.62118
11A	60,900	.48876	16A	67,700	.54333
11B	65,400	.52487	16B	72,200	.57945
11C	64,025	.51384	16C	70,825	.56841
11D	64,025	.51384	16D	70,825	.56841
11E	65,400	.52487	16E	72,200	.57945
11F	47,600	.38202	16F	54,400	.43659
11G	47,600	.38202	16G	54,400	.43659
11H	67,375	.54072	16H	74,175	.59530
11I	63,500	.50963	16I	70,300	.56420
11J	63,500	.50963	16J	70,300	.56420
11K	67,375	.54072	16K	74,175	.59530
11L	72,600	.58266	16L	79,400	.63723
12A	61,700	.49518	17A	69,700	.55938
12B	66,200	.53129	17B	74,200	.59550
12C	64,825	.52026	17C	72,825	.58446
12D	64,825	.52026	17D	72,825	.58446
12E	66,200	.53129	17E	74,200	.59550
12F	48,400	.38844	17F	56,400	.45264
12G	48,400	.38844	17G	56,400	.45264
12H	68,175	.54714	17H	76,175	.61135
12I	64,300	.51605	17I	72,300	.58025
12J	64,300	.51605	17J	72,300	.58025
12K	68,175	.54714	17K	76,175	.61135
12L	73,400	.58908	17L	81,400	.65328
14A	63,700	.51123	18A	71,700	.57544
14B	68,200	.54735	18B	76,200	.61155
14C	66,825	.53631	18C	74,825	.60052
14D	66,825	.53631	18D	74,825	.60052
14E	68,200	.54735	18E	76,200	.61155
14F	50,400	.40449	18F	58,400	.46870
14G	50,400	.40449	18G	58,400	.46870
14H	70,175	.56320	18H	78,175	.62740
14I	66,300	.53210	18I	74,300	.59630
14J	66,300	.53210	18J	74,300	.59630
14K	70,175	.56320	18K	78,175	.62740
14L	75,400	.60513	18L	83,400	.66933
<u>Ground Floor</u>					
G1	88,381.64	.70931			
G2	67,441.05	.54125			
G3	47,732.25	.38308			
G4	23,404.20	.18783			
G5	74,523.90	.59810			
G6	83,454.45	.66977			

ED 722 PAGE 556

BYLAWS
OF
MIDDLEBOROUGH,
HORIZONTAL PROPERTY REGIME

THESE BYLAWS of Middleborough Horizontal Property Regime are promulgated pursuant to the Horizontal Property Act of South Carolina (the "Horizontal Property Act") for the purpose of governing Middleborough Council of Co-owners (the "Council") and the administration of Middleborough (the "Property"), which has been submitted to a horizontal property regime. The terms used herein are defined in the Master Deed by which the Property was so submitted, and these Bylaws incorporate and are subject to the provisions of said Master Deed.

ARTICLE I

CO-OWNERS

A. Membership. Every Co-owner shall be a member of the Council. A person who holds title to an Apartment merely as security for payment of a debt shall not be entitled to exercise the rights of a Co-owner unless such person holds a proxy conferring such rights.

B. Voting. Votes of the Co-owners shall be cast only at meetings of the Co-owners convened in accordance with these Bylaws. The affirmative vote of a Majority of the Co-owners, as hereinafter defined, shall be required to adopt decisions.

C. Majority of the Co-owners. As used in these Bylaws, the term "Majority of the Co-owners" means Co-owners entitled to cast a total of more than fifty (50) votes.

D. Quorum. A Majority of the Co-owners present in person or by proxy shall constitute a quorum for the transaction of business at meetings of the Co-owners.

E. Consents. Any action which may be taken by a vote of the Co-owners may also be taken by written consent to such action signed by all Co-owners.

F. Annual Meetings. An annual meeting of the Co-owners shall be held on the second Tuesday in March of each year or at such other time during each year as may be determined by a Majority of the Co-owners. Any business which is appropriate for action of the Co-owners may be transacted at an annual meeting.

G. Special Meetings. Special meetings of the Co-owners may be called at any time by the President of the Council or by a majority of the Board of Directors and shall be called upon the written request of a Majority of the Co-owners. Only such business as is stated in the notice of meeting shall be transacted at a special meeting unless all Co-owners waive notice of any additional business.

H. Notice of Meetings. Written notice of every annual or special meeting of the Co-owners stating the time, date and place of the meeting and, in the case of a special meeting, the business proposed to be transacted shall be given to every Co-owner not fewer than ten (10) nor more than thirty (30) days in advance of the meeting. Failure to give proper notice of a meeting of the Co-owners shall not invalidate any action taken at such meeting unless a Co-owner who 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 Co-owner objects shall be void.

I. Waiver of Notice. Waiver of notice of a meeting of the Co-owners shall be deemed the equivalent of proper notice. Any Co-owner may in writing waive notice of any meeting of the Co-owners either before or after such meeting. Attendance at a meeting by a Co-owner, whether in person or by proxy, shall be deemed waiver by such Co-owner of notice of the time, date and place thereof unless such Co-owner 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

more than
50%
ownership
interest

thereat unless objection to lack of notice is raised before the business of which proper notice was not given is put to a vote.

J. Place of Meeting. All meetings of the Co-owners shall be held upon the Property or at such other place which is convenient to the Co-owners as the President of the Council or the Board of Directors may direct.

K. Adjournment. Any meeting of the Co-owners may be adjourned from time to time for periods not exceeding forty-eight (48) hours by vote of Co-owners holding a majority of the votes represented at such meeting, regardless of whether a quorum is present. Any business which 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.

L. Order of Business. The order of business at all meetings of the Co-owners shall be as follows:

1. Roll Call;
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. Election of inspectors of election (when required);
8. Election of Directors (when required);
9. Unfinished business;
10. New business.

M. Minutes of meetings. The Secretary of the Council shall prepare, or cause to be prepared, and keep accurate minutes of every meeting of the Co-owners. Such minutes shall be made available for examination and copying by any Co-owner at any reasonable time.

N. Who May Act for a Co-owner. 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 trust shall act by any trustee thereof, and any other legal entity shall act by any managing agent thereof. When a Co-owner consists of two or more persons, any one of such persons shall be deemed authorized to act for all in taking any action on behalf of such Co-owner unless another of such persons objects, in which case the votes which such Co-owner would otherwise be entitled to cast may not be cast.

O. Proxies. Any Co-owner may by written proxy designate an agent to cast the votes of such Co-owner. Unless otherwise stated therein, a proxy shall be deemed to confer the authority to execute consents and waivers and to exercise the right to examine the books and records of the Council. A proxy may be revocable or irrevocable but shall be deemed revocable at will unless otherwise specified therein. No proxy shall be honored until delivered to the Secretary of the Council.

ARTICLE II

BOARD OF DIRECTORS

A. Form of Administration. The administration of the Council and the Property shall be vested in a Board of Directors consisting of not less than three (3) nor more than five (5) directors elected from the Co-owners. Provided however, that notwithstanding R-42

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10593 Page 130

the Property to the Horizontal Property Act of South Carolina, or its successor in interest in the Property, owns fewer than twenty-five (25%) percent of the Apartments in the Property encompassing Phase I or until the passage of three (3) years from the date of recording of the Master Deed for the regime, whichever first occurs, there shall be not more than three directors and Middleborough limited partnership or its successors shall be entitled to designate two of such directors, and any successors to such directors due to vacancy for any reason. The third directorship shall remain vacant until Middleborough limited partnership or its successor has conveyed Apartments in Phase I entitled to more than sixty-seven (67%) percent of the regime votes. Upon such conveyance of Apartments representing more than sixty-seven (67%) percent of the regime votes, the third director shall be elected by a majority vote (according to percentage interest as provided in the Master Deed) of Apartments owned by persons other than Middleborough limited partnership, or its successor;

B. Authorities and Duties. The authorities and duties of the Board of Directors shall include the following:

1. To provide for the security of the Property;
2. To provide for the maintenance, repair and replacement of the Common Elements;
3. To employ and discharge the persons necessary for the operation, maintenance, repair and replacement of the Common Elements;
4. To collect from the Co-owners their respective shares of the Common Expenses;
5. To insure the Property as hereinafter provided;
6. To enact reasonable regulations governing the operation and use of the Property;
7. To enforce the terms of the Horizontal Property Act, the Master Deed and these Bylaws and the Regulations promulgated pursuant hereto as hereinafter provided; and
8. To administer the Council and the Property on behalf of and for the benefit of all Co-owners.

C. Qualification. Only an ⁽¹⁾ individual who is a Co-owner, or who together with another person or other persons is a Co-owner, or who is an officer of a corporation, a general partner of a partnership, an associate of an association, a trustee of a trust, or a managing agent of any other legal entity which is a Co-owner, or which together with another person or other persons is a Co-owner, may be elected or continue to serve as a Director of the Council. The number of Directors provided at any one time by a Co-owner which is an organization or which consists of more than one individual shall not exceed the number of Apartments owned by such Co-owner.

D. Election and Term. Subject to the provision of Article II-A, above, the initial Board of Directors shall be elected at the organizational meeting of the Council and shall serve until the first annual meeting of the Co-owners. At each annual meeting of the Co-owners a new Board of Directors shall be elected to succeed the Directors whose terms expire at such meeting. Each Director shall be elected to serve until the next annual meeting of the Co-owners following his election. A director may be elected to succeed himself, and a Director shall be deemed to continue in office until his successor has been elected and has assumed office.

E. Removal. A director may be removed from office with or without cause by the affirmative vote of a Majority of the Co-owners.

F. Vacancies. Any vacancy in the Board of Directors caused by any reason shall be filled by a new Director elected by the affirmative vote of a Majority of the Co-owners.

G. Voting. Each Director shall have one (1) vote on all matters acted upon by 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.

II. Quorum. Two (2) Directors shall constitute a quorum for the transaction of business.

I. Consents. Any action which 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.

J. Referendum. Any action taken by a vote of a Majority of the Co-owners shall be binding upon the Board of Directors and shall supersede any inconsistent action previously or thereafter taken by the Board of Directors, but no such action by the Co-owners shall impair the enforceability of any contract duly authorized or entered into by the Board of Directors pursuant to authority granted in the Horizontal Property Act, the Master Deed or these Bylaws.

K. Annual Meetings. An annual meeting of the Board of Directors shall be held during each fiscal year within ten (10) days following the annual meeting of the Co-owners. The time, date and place of the annual meeting of the Board of Directors shall be fixed at the annual meeting of the Co-owners by mutual consent of the Directors present at such meeting, and no further notice thereof shall be necessary. Any business which is appropriate for action of the Board of Directors may be transacted at a regular meeting.

L. Regular Meetings. Regular meetings of the Board of Directors shall be held at such times, dates and places, as the Board of Directors may determine from time to time, but at least three (3) regular meetings shall be held each fiscal year. Any business which is appropriate for action of the Board of Directors may be transacted at a regular meeting.

M. Special Meetings. Special meetings of the Board of Directors may be called from time to time by the President of the Council and shall be called upon the written request of three (3) of the Directors. Only such business as is stated in the notice of meeting shall be transacted at a special meeting unless all Directors waive notice of any additional business.

N. Notice of Meetings. Written notice of every regular or special meeting of the Board of Directors stating the time, date and place of the meeting and, in the case of a special meeting, the business proposed to be transacted shall be given to every Director not fewer than three (3) 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 a Director who 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.

O. 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 meetings. Attendance at a meeting by a Director shall be deemed a waiver 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 thereat unless objection to lack of notice is raised before the business of which proper notice was not given is put to a vote.

P. Place of Meeting. All meetings of the Board of Directors shall be held upon the Property or at such other place convenient to the Directors as the President of the Council or the Board of Directors may direct. Meetings may be conducted by telephone if all Directors consent.

Q. Minutes of Meetings. The Secretary of the Council shall prepare, or cause to be prepared, and keep accurate minutes of every meeting of the Board of Directors. A copy of such minutes shall be distributed to each Co-owner within thirty (30) days following each meeting, and all such minutes shall be made available for examination and copying by any Co-owner at any reasonable

R. Compensation. The Directors shall serve without compensation but shall be entitled to reimbursement by the Council for expenses incurred in the conduct of their duties.

ARTICLE III

OFFICERS

A. Designation. The Council shall have a President, a Vice President, a Secretary and a Treasurer. The Council may also have one or more assistants to the Secretary and to the Treasurer and such other officers as may be necessary from time to time. The offices of the Secretary and the Treasurer may be filled by the same individual.

B. Qualifications. The President and the Vice President must be Directors, and all other officers must be individuals who are qualified to be Directors.

C. Election and Term. Officers of the Council shall be elected at each annual meeting of the Board of Directors and at such other times as may be required to fill vacancies of 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.

D. Removal. Any officer may be removed from office at any time with or without cause by the Board of Directors or by the Co-owners. An officer removed by the Co-owners shall be replaced only by the Co-owners.

E. President. The President shall be the chief executive officer of the Council. He shall preside at all meetings of the Council and of the Board of Directors at which he is present. He shall have all of the general powers and duties which are usually vested in the office of the president of an unincorporated association, including but not limited to the power to appoint committees from among the Co-owners from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Council.

F. Vice President. The Vice President shall take the place and perform the duties of the President whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other Co-owner to take the place and perform the duties of the President on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors.

G. Secretary. The Secretary shall keep the minutes of all meetings of the Co-owners and of the Board of Directors, shall have charge of such books and papers as the Board of Directors may direct, and shall, in general, perform all the duties incident to the office of secretary of an incorporated association.

H. Treasurer. The Treasurer shall have custody of and responsibility for Council funds and securities and shall keep the financial records and books of account belonging to the Council. If a Manager is employed as hereinafter provided, custody of Council 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 of Directors so determine, but in such case the Treasurer shall verify the amounts of Council 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.

I. Compensation. The officers may receive such compensation as the Co-owners may determine and shall be entitled to reimbursement by the Council for expenses incurred in the conduct of their duties.

ARTICLE IV

MANAGER

7 A. Employment. The Board of Directors may employ a professional Manager to assist in or take charge of the administration of the Council and the Property.

B. Qualification. The Manager may be a corporation or other legal entity. No individual who is a Director or an officer of the Council or who resides in the home of a Director or an officer of the Council shall be the Manager or an officer, director, or agent of the manager.

C. Authority and Duties. The Manager shall have such authority and duties as may be determined by the Board of Directors and shall report to the Board of Directors or to the President, as the Board of Directors may determine.

D. Compensation. The Manager shall receive such compensation as the Board of Directors may determine.

ARTICLE V

FINANCES

A. Fiscal Year. The fiscal year of the Council shall be the calendar year unless the Co-owners shall otherwise determine.

B. Budget. The Board of Directors shall prepare, or cause to be prepared, and submit to the Co-owners at each annual meeting of the Co-owners a proposed budget for the Council for the fiscal year in which the meeting is held. The proposed budget shall set forth with particularity the anticipated Common Expenses for the fiscal year and the amount of money needed to establish reasonable reserves for the payment of future or unforeseen Common Expenses.

C. Approval of Budget. The proposed budget, as it may be amended upon motion of any Co-owner, shall be submitted to a vote of the Co-owners and when approved by the affirmative vote of a Majority of the Co-owners shall become the budget of the Council for the fiscal year (the "Budget"). The terms of the Budget shall be binding upon the Board of Directors until such terms are amended by action of the Co-owners.

D. Regular Assessments. The funds required by the Budget shall be collected from the Co-owners by the Board of Directors in equal monthly or quarterly assessments as the Board of Directors may determine.

E. 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 the Co-owners shall be collected from the Co-owners by the Board of Directors in such installments as the Co-owners shall determine.

F. Individual Assessments. Any payments to the Council which one or more, but fewer than all, of the Co-owners shall be obligated to make pursuant to the terms of the Horizontal Property Act, the Master Deed or these Bylaws shall be due upon demand and shall be collected by the Board of Directors.

G. Collection. Co-owners shall be liable for all assessments and shall pay the same promptly when due. The Board of Directors shall take prompt and appropriate action 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 Co-owner owing the same shall be required to pay all reasonable costs of collection, including attorney's fees. Assessments together with any and all late charges or penalties and costs of collection as provided herein, shall constitute a lien on the Apartments as provided in the Horizontal Property Act, these Bylaws and the Master Deed.

H. Penalty. An assessment not paid within ten (10) days following the date when due shall bear a penalty of five dollars (\$5.00) plus one percent (1%) of the assessment per month from the date when due. The penalty shall be added to the assessment. R-46

this paragraph only, an unpaid assessment shall not be deemed overdue until the Board of Directors has delivered to the Co-owner owing the same a demand for payment, unless the Board of Directors has within thirty (30) days prior to the date when due delivered to such Co-owner a written notice of the amount and the date due, in which case no further demand shall be necessary. The Board of Directors may in its discretion waive all or any portion of a penalty or interest imposed pursuant to this paragraph if it affirmatively appears that the failure to pay the assessment when due was caused by circumstances beyond the control of the Co-owner.

I. Accounts. The Board of Directors shall maintain on behalf of the Council a checking account with a state or federally chartered bank having an office in the county where the Property is situated. The Board of Directors may also maintain on behalf of the Council an interest-bearing savings account with a state or federally chartered bank, savings and loan association or building and loan association. If a Manager is employed, said account may be maintained in the name of the Manager if the Board of Directors approves. All funds of the Council shall be promptly deposited in one of said accounts, except that the Board of Directors may maintain a petty cash fund of not more than fifty dollars (\$50.00) for payment for minor current expenses of the Council. The books and records relating to any account of the Council shall be made available for examination and copying by any Co-owner at any reasonable time.

J. Payments. The Board of Directors shall provide for payment of all debts of the Council from the funds collected from the Co-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 fifty dollars (\$50.00) shall be reviewed and approved by the President or the Board of Directors before payment is made. All checks and requests for withdrawals drawn upon any account of the Council shall be signed by the President and the Treasurer or by any two (2) alternate officers of the Council designated by the Board of Directors. If a Manager is employed, the Board of Directors may authorize the Manager to draw checks upon the account of the Council. The Board of Directors may also authorize the Manager to make disbursements from the petty cash fund, if any.

K. Bonding. The Board of Directors shall secure from a surety company rated "AAA" or better by Best's Insurance Reports a fidelity bond in an amount of not less than ten thousand Dollars (\$10,000.00) covering every individual authorized to withdraw funds from any checking or savings account maintained by the Council. The cost of the bond shall be a Common Expense.

ARTICLE VI

MAINTENANCE AND IMPROVEMENTS

A. Maintenance by Board of Directors. The Board of Directors shall provide for the maintenance, repair and replacement of the Common Elements and shall employ and dismiss the personnel required for such maintenance, repair and replacement.

B. Maintenance by Co-owners. Each Co-owner shall maintain his Apartment in good condition and repair.

C. Default by Co-owner. In the event that any Co-owner fails to perform the maintenance required of such Co-owner by these Bylaws or by any lawful Regulation enacted pursuant hereto 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 Co-owner or which substantially detracts from the value or appearance of the Property, the Board of Directors shall, after giving such Co-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 Co-owner by an individual assessment.

D. Expenses. Except as hereinafter provided, the expenses of all maintenance, repair and replacement provided by the Board of Directors shall be Common Expenses. The expenses of maintenance, repair or replacement which are necessitated by (i) the failure of a Co-owner to perform the maintenance required by these Bylaws or by any lawful regulation enacted pursuant hereto,

loss which is to be borne by a Co-owner in accordance with Article VII of these Bylaws shall be charged to such Co-owner by an individual assessment.

E. Improvements. The Board of Directors shall provide for the making of such improvements to the Common Elements as may be approved from time to time by the Co-owners. The cost of such improvements shall be Common Expenses; provided, however, that no Co-owner shall without his consent be assessed in any one year for the making of improvements to the Common Elements an amount in excess of one percent (1%) of the value of his Apartment as set forth in the Master Deed.

ARTICLE VII

RECONSTRUCTION

A. Decision of Co-owners. In the event of substantial damage to or destruction of any portion of the Property, the damage or destruction shall promptly be appraised by the Board of Directors. If more than two-thirds (2/3) of the Property has been destroyed, the Board of Directors shall promptly call a special meeting of the Co-owners to determine in the manner provided in the Master Deed whether the Property shall be reconstructed. In the event that the Co-owners determine not to reconstruct the Property, the Secretary shall execute a certificate to that effect and cause the same to be recorded in the same manner as these Bylaws; provided, however, that:

1. Any restoration or repair of the Property, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Master Deed and the original plans and specifications referenced in the Master Deed unless other action is approved by Mortgagees on Apartments which have at least fifty-one (51%) percent of the votes of Apartments subject to mortgages, and;
2. Any election to terminate the legal status of the project after substantial destruction or a substantial taking in condemnation of the Property must require the approval of Mortgagees of Apartments which have at least fifty-one (51%) percent of the votes of Apartments subject to mortgages.

B. Reconstruction. Unless the Co-owners affirmatively determine in the manner provided in the Master Deed not to reconstruct the Property following damage or destruction thereof, the Board of Directors shall promptly provide for such reconstruction. Such reconstruction shall encompass and include repair and replacement of all floor coverings, fixtures and appliances originally installed in the Apartment by the builder or equivalent replacements thereof installed by a subsequent Co-owner. If the cost of such reconstruction exceeds ten thousand dollars (\$10,000.00), the Board of Directors shall employ an architect licensed to practice in the jurisdiction or jurisdictions in which the Property is situated to supervise the reconstruction. It shall be the duty of such architect to inspect the progress of the reconstruction at regular intervals and to submit written authorizations to the Insurance Trustee hereinafter identified for the payment for work performed. When an architect is not required by the terms hereof, the Board of Directors may perform such inspections and submit such authorizations.

C. Costs. The Board of Directors shall employ for the purpose of reconstructing the Property the proceeds of any insurance obtained on the Property by the Board of Directors on behalf of the Council. If such insurance proceeds do not cover the cost of the reconstruction, the deficiency shall be borne by the Council as a Common Expense up to an amount equal to the sum of (i) the amount deducted pursuant to a "loss deductible" clause of the insurance policy plus (ii) fees and expenses of the Insurance Trustee hereinafter identified. Any deficiency in excess of such amount shall be borne by the Co-owners in proportion to their respective interests in the portion or portions of the Property reconstructed.

ARTICLE VIII

CONDEMNATION

A. Rights of Co-owners. If any portion of the Property is condemned by any authority having the power of eminent domain, each Co-owner and each Mortgagee shall be entitled to receive notice of such condemnation and to participate in the proceedings incident thereto unless otherwise prohibited by law. Each Co-owner or mortgagee, as their interest may appear, shall be entitled to an individual award to be determined by the value of his interest in the portion or portions of the Property condemned.

B. Duties of the Council. In the event that any award is received by the Council on account of condemnation of any portion or portions of the Common Elements, the Board of Directors shall promptly pay such award to the Insurance Trustee hereinafter identified as trustee for the Co-owners to be disbursed in the same manner as if it were insurance proceeds. The Board of Directors shall promptly call a special meeting of the Co-owners to determine whether any condemned portion of the Common Elements shall be replaced. If the Co-owners determine 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

INSURANCE

A. Hazard Insurance. The Board of Directors shall insure the Property on behalf of the Council for the full replacement cost thereof against all hazards and risks normally covered by a standard "all-risk" policy, including fire and lightning, and the hazards and risks covered by "extended coverage" and by "special extended coverage" in the amount of the replacement cost of the Property without regard to depreciation. Such insurance shall cover only the Apartments and the Common Elements. No insurance of the contents of any Apartment (other than the fixtures originally installed therein during construction and being a part of such Apartment) or any improvements made to an Apartment by any Co-owner shall be provided by the Board of Directors. The hazard insurance obtained by the Board of Directors may provide that an amount not to exceed one thousand dollars (\$1,000.00) shall be deductible from any indemnity payable on account of a single loss, except that in the case of loss caused by wind or hail the deductible amount may not exceed one percent (1%) of the loss. Any such deductible portion shall be borne by the Council as a Common Expense regardless of the number of Co-owners directly affected by the loss.

B. Liability Insurance. The Board of Directors shall also obtain premises liability insurance on the Property providing for a single-limit indemnity of not less than one million dollars (\$1,000,000.00) and covering bodily and personal injury and property damage. The Board of Directors shall not be required, however, to obtain public liability insurance covering accidents occurring within an Apartment or off the Property. The Board of Directors shall cause medical payment coverage to be included within the policy of liability insurance with indemnity limits of five hundred dollars (\$500.00) per person and ten thousand dollars (\$10,000.00) for each accident.

C. General Provisions. All insurance obtained on the Property by the Board of Directors shall be written in the name of the Council, and the cost of such insurance shall be a Common Expense. All such insurance shall be obtained from a company or companies licensed to do business in the State of South Carolina and rated "AAA" or better by Best's Insurance Report. No such insurance shall be permitted to expire except upon resolution of the Co-owners to that effect. Certificates of all policies of hazard insurance obtained on the Property by the Board of Directors on behalf of the Council shall be delivered upon request to any Co-owner or any person holding a mortgage on an Apartment.

D. Hazard Policy Provisions. All policies of hazard insurance on the Property obtained by the Board of Directors on behalf of the Council shall

1. The indemnity payable on account of any damage to or destruction of the Property shall be payable to any persons holding liens on or security interest in any Apartment as their interests may appear;

2. The policy shall not be cancelled without thirty (30) days prior written notice to the Board of Directors and to every holder of a lien upon or security interest in any Apartment who is named in the policy or an endorsement thereto;

3. No Co-owner shall be prohibited from insuring his own Apartment for his own benefit;

4. No insurance obtained by a Co-owner on his own Apartment shall be brought into contribution with the insurance obtained by the Board of Directors;

5. No right of subrogation shall exist against any Co-owner or members of his household;

6. The insurer shall not be entitled to reconstruct in lieu of paying the indemnity in cash if the Co-owners determine in the manner provided in the Master Deed not to repair or restore the Property; and

7. The policy shall not be cancelled on account of the actions of one or more, but fewer than a Majority, of the Co-owners.

If a policy of insurance containing all of the foregoing provisions cannot be obtained at a reasonable cost, one or more of such provisions may be waived by unanimous resolution of the Board of Directors preceded by ten (10) days notice of every Co-owner or by resolution of the Co-owners.

E. Claims. The Board of Directors, on behalf of the Council, shall have exclusive authority to negotiate and settle on behalf of the Co-owners all claims arising under policies of hazard insurance obtained on the Property by the Board of Directors on behalf of the Council. In the event of damage to or destruction of any portion of the Property, the Board of Directors shall promptly file a claim for any indemnity due under any such policies. The Board of Directors shall simultaneously notify the holders of any liens upon or security interests in the Property who may be entitled to participate in such claim or the filing of the same.

F. Insurance Proceeds. The net proceeds received by the Board of Directors from any indemnity paid under a policy of hazard insurance obtained on the Property by the Board of Directors on behalf of the Council shall promptly be paid by the Board of Directors to an Insurance Trustee as Trustee for the Co-owners as hereinafter provided. The Insurance Trustee shall be a state or federally chartered bank selected by the Board of Directors and having trust powers and capital and surplus of five million dollars (\$5,000,000.00) or more. The Insurance Trustee shall hold the insurance proceeds in trust and disburse said proceeds, after deduction of all reasonable fees and expenses of the Insurance Trustee, as follows:

1. If the Co-owners determine in the manner provided in the Master Deed not to reconstruct the Property, the Insurance Trustee shall distribute the insurance proceeds among all the Co-owners and their mortgagees as their interest may appear in proportion to their respective interests in the portion or portions of the Property damaged or destroyed.

2. If the Board of Directors is required to provide for the reconstruction of the Property, the Insurance Trustee shall disburse the insurance proceeds to the person or persons employed by the Board of Directors to effect such reconstruction in accordance with written authorizations submitted to the Insurance Trustee by the architect supervising the reconstruction or by the Board of Directors. Any portion of the insurance proceeds remaining after all the costs of reconstructing the Property have been paid shall be distributed to the Co-owners R-50 proportion to their interest in the

In making disbursements of the insurance proceeds, the Insurance Trustee shall be entitled to rely without further inquiry upon the written authorizations submitted as provided above or upon any written certification of facts submitted to the Insurance Trustee by the Board of Directors as hereinafter provided. The Insurance Trustee shall in no event be responsible for obtaining insurance on the Property, paying the premiums on any such insurance or filing claims for any payments due under any such insurance.

G. Insurance by Co-owners. Each Co-owner shall be responsible for obtaining such amounts of the following types of insurance as he deems necessary or desirable:

1. Hazard insurance on his Apartment for his own benefit;
2. Hazard insurance on the contents of his Apartment and on improvements made to his Apartment; and
3. Liability insurance covering accidents occurring within his Apartment.

Any Co-owner who obtains hazard insurance on his Apartment for his own benefit shall within thirty (30) days of obtaining the same deliver to the Board of Directors a certificate evidencing such policy of insurance.

ARTICLE X

NOTICE AND CONSENT OF CERTAIN MORTGAGEES REQUIRED

A. Notice of Action: In addition to any other notice provisions contained in these Bylaws, in the Master Deed or elsewhere, and not in lieu thereof, upon written request to the Council of Co-owners, identifying the name and address of the holder, insurer or guarantor and the Apartment Unit number, any mortgage holder or insurer or guarantor will be entitled to timely written notice of:

1. Any condemnation loss or any casualty loss which affects a material portion of the Property or any Apartment Unit on which there is a first mortgage held, insured, or guaranteed by the requesting mortgage holder or insurer or guarantor, as applicable;
2. Any delinquency in the payment of assessments or charges owed by an owner of an Apartment Unit subject to a first mortgage held, insured or guaranteed by such holder or insurer or guarantor, which remains uncured for a period of sixty (60) days;
3. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Council of Co-owners;
4. Any proposed action which would require the consent of a specified percentage of mortgage holders as specified in Article X B, below.
5. Any election not to reconstruct the Property after substantial damage by fire or other casualty or any election to terminate, regroup or merge the Regime.

B. Consent of Mortgagees: Except as provided in Article V of the Master Deed, but in addition to any other similar provisions contained herein, the consent of the Owners of Apartment units to which at least sixty-seven percent (67%) of the votes in the Council of Co-owners are allocated and the approval of holders of mortgages on Apartment Units which have at least fifty-one percent (51%) of the votes of Apartment Units subject to mortgages, shall be required to add or amend any material provisions of these Bylaws, the Master Deed or other Regime documents of the Property which establish, provide for, govern or regulate any of the following:

1. Voting;
2. Assessments, assessment liens or subordination of such

3. Reserves for maintenance, repair and replacement of the common areas;
 4. Insurance or Fidelity Bonds;
 5. Rights to use of the common areas;
 6. Responsibility for maintenance and repair of the several portions of the project;
 7. Expansion or contraction of the project or the addition, annexation or withdrawal of property to or from the project;
 8. Boundaries of any Apartment;
 9. The interests in the Common Areas;
 10. Convertibility of Apartment Units into Common Areas or Common Areas into Apartment Units;
 11. Leasing of Apartment Units;
 12. Imposition of any right of first refusal or similar restriction on the right of an Apartment Unit owner to sell, transfer, or otherwise convey his Apartment; and
 13. Any provisions which are for the express benefit of mortgage holders, or insurers or guarantors of first mortgages on Apartment Units.
- C. Presumption of Consent: Any mortgagee who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

ARTICLE XI

RESTRICTIONS AND REGULATIONS

A. Restrictions. The use of the Property shall be subject to the following restrictions:

1. Apartments in Phase I shall be used only as residences.
2. No Co-owner shall maintain or permit any nuisance within his Apartment or unreasonably interfere with the use and enjoyment of the Property by any other person entitled to the same by creating anywhere on the Property or permitting within his Apartment the creation of excessive noise, smoke or offensive odors. No person shall maintain on the Property, and no Co-owner shall permit within his Apartment, any condition which is unreasonably hazardous to the life, health or property of any other person.
3. No person shall make any additions to or perform any work upon the Common Elements or otherwise alter the Common Elements without the express authorization of the Board of Directors. No Co-owner shall alter or permit the alteration of the external appearance of any portion of his Apartment without the express approval of the Board of Directors.

B. Regulations. The Board of Directors shall adopt and amend from time to time such reasonable regulations ("Regulations") governing the operation and use of the Property as they may deem necessary or desirable. It shall not be necessary to record Regulations newly adopted or the amendment or repeal of existing Regulations, but no Co-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 such Co-owner.

C. Enforcement. The Board of Directors shall enforce the terms of the Horizontal Property Act, the Master Deed and these Bylaws and the Regulations promulgated pursuant hereto and shall take prompt and appropriate action to

correct any violations of the same. In addition to any other remedy to which the Council or any Co-owner may be entitled, the Board of Directors may impose against a Co-owner reasonable fines not to exceed a total of ten dollars (\$10.00) per day for any violation of the terms of the Horizontal Property Act, Master Deed or these Bylaws or of the Regulations promulgated pursuant hereto. Such fines shall be collected by individual assessment. Each day during which a violation occurs or continues may be deemed a separate offense.

D. Responsibility of Co-Owners. Each Co-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 Co-owner shall not relieve any member of his household or any of his tenants, agents or guests for any liability to the Council or to a Co-owner for their own acts.

ARTICLE XII

LIABILITIES AND INDEMNIFICATION

A. Liability of Council. No Co-owner shall be liable upon a debt or tort of the Council for any amount in excess of such portion of the liability of the Council which bears the same ratio to the total liability as to percentage of interest of such Co-owner in the Common Elements bears to the whole. All correspondence of the Council and all contracts executed by the Council shall incorporate the following recital:

The Middleborough Council of Co-owners is an unincorporated association established pursuant to the Horizontal Property Act of South Carolina. No member of the Council shall be liable upon a debt of the Council for an amount in excess of such portion of the debt which bears the same ratio to the total debt as the number of votes in the Council which the member is entitled to cast bears to the total number of votes which all members of the Council are entitled to cast.

B. Indemnification Among Co-owners. Each Co-owner shall be entitled to contribution from and indemnification by every other Co-owner to the extent that such Co-owner discharges or is required to discharge any portion of any liability of the Council in excess of such Co-owner's proportionate share thereof, except that no Co-owner shall be required to provide contribution or indemnification on account of a debt which was due and payable prior to the time such Co-owner became a Co-owner.

C. Liability of Directors and Officers. No Director or officer of the Council shall be liable to any Co-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 Horizontal Property Act, the Master Deed or these Bylaws.

D. Indemnification of Directors and Officers. The Council shall indemnify and defend each Director and each officer of the Council from any liability claimed or imposed against him by reason of his position or actions as a Director or an officer of the Council if all of the following conditions are satisfied:

1. Such Director or officer is not required to bear such liability by the terms of the Horizontal Property Act, the Master Deed or these Bylaws;

2. Such Director or officer gives the Council adequate notice of the claim or imposition of liability to permit the Council reasonable opportunity to defend against the same; and

3. Such Director or officer cooperates with the Council in defending against the liability.

The expense of indemnifying a Director or an officer shall be a Common Expense and shall be borne by all the Co-owners, including such Director or officer, in accordance with their percentage of ownership.

ARTICLE XIII

ATTESTATIONS AND CERTIFICATIONS

A. Attestation of Documents. The presence of the signature of the Secretary or an assistant secretary of the Council on any contract, conveyance or any other document executed on behalf of the Council by another officer of the Council shall attest:

1. That the officer of the Council 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 Council and that the signature of such officer subscribed to the document is genuine; and

2. That the execution of the document on behalf of the Council has been duly authorized.

B. Certification of Documents. When any document relating to the Property or the Council is certified as authentic by the Secretary or an assistant secretary of the Council, a third party without knowledge or reason to know to the contrary may rely on such document as being what it purports to be.

C. Certification of Actions and Facts. When a written statement setting forth (i) actions taken by the Co-owners or by the Board of Directors or (ii) facts relating to the Property or the Council as determined by the Board of Directors is executed by the Secretary or an assistant secretary of the Council, a third party without knowledge or reason to know to the contrary may rely on such statement as factually true and correct.

ARTICLE XIV

AMENDMENTS

A. Procedure. These Bylaws may be amended from time to time by resolution adopted by the affirmative vote of Co-owners entitled to cast a total of no fewer than seventy-five (75) votes. No amendment shall be effective unless and until recorded as an amendment to the Master Deed as required by the Horizontal Property Act.

B. Effect. All Co-owners, tenants of Co-owners, employees of Co-owners and tenants, and any other persons that may in any manner use the Property or any part thereof shall be bound to abide by any amendment to these Bylaws duly adopted and recorded as specified herein.

ARTICLE XV

MISCELLANEOUS

A. Record of Ownership. Any person who acquires title to an Apartment except a person who acquires title to an Apartment merely as security for a debt, shall promptly inform the Board of Directors of the identity of such person and the date upon and manner in which title to the Apartment was acquired. The Board of Directors shall maintain a record of the names of all Co-owners and of the dates upon which they acquired title to their Apartments.

B. Notices. Any notices or documents placed in the mail receptacle or

D. Conflicts. In the event of any conflict between these Bylaws and the Horizontal Property Act or the Master Deed, the Horizontal Property Act or the Master Deed shall control, as appropriate. In the event of a conflict between these Bylaws and the Regulations promulgated pursuant hereto, these Bylaws shall control.

E. 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.

F. 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.

G. 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.

Deed Prepared By:
Frederick I. Hall, III, P.A.
301 Gibson Road
Lexington, SC 29072
(803) 957-1243
FILE: 15-0108

Book 2018-597

2015026040 04/07/2015 11:30:08:313

Fee: \$10.00 County Tax: \$82.50

Deed
State Tax: \$195.00



2015026040 John T. Hopkins II

Richland County R.O.D.

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

DEED TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, That **G. Darryl Wieland and Manhal Wieland** (Hereinafter Called "Grantor (s)") in the State aforesaid, for and in consideration of the Sum of **Seventy Five Thousand and 00/100 (\$75,000.00)**, and to establish a joint tenancy with right of survivorship, in the State aforesaid have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Grantee(s),

Kevin P. O'Hara and Rebekah H. O'Hara
As **JOINT TENANTS**, With the **RIGHT OF SURVIVORSHIP**,
and not as Tenants in Common;

All that certain Apartment known as Apartment Unit 2-J in Middleborough Horizontal Property Regime as shown on the plans and specifications attached to that certain master deed executed by Middleborough, a Limited Partnership, dated October 14, 1981, and recorded in the Office of the ROD for Richland County in Deed Book D593 at page 92, amended by amendment to master deed dated December 21, 1984 and recorded in said office in Deed Book D722 at Page 551 in the Office of the ROD for Richland County.

This being the identical property conveyed to G. Darryl Wieland & Manhal Wieland by Deed of Greg Smith, dated July 26, 2002 and recorded August 14, 2002 in the Office of the ROD for Richland County in Book 693, at Page 3147 and by Deed of G. Darryl Wieland, dated January 9, 2003 and recorded January 13, 2003 in Book 746, at Page 377.

TMS # 11581-02-10

PROPERTY ADDRESS: 1825 St. Julian Place, Unit 2-J, Columbia, SC 29204

GRANTEE'S ADDRESS: 2807 Osborne Road, Brookhaven, GA 30319

This Deed is also made subject to all zoning and other governmental regulations of the County of **Lexington** and any other governmental agency (local, state or federal).

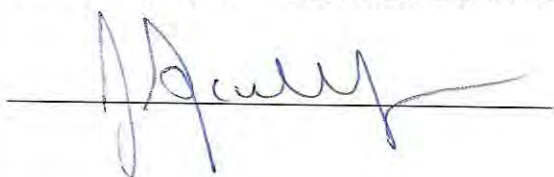
TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to said premises, belonging or in any wise incident or appertaining;

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the Grantee(s) and the Grantee (s) heirs and assigns forever.

And the Grantor(s) do hereby bind the Grantor(s) and the Grantor's successors, heirs and assigns to warrant and forever defend all and singular the before-mentioned premises unto the Grantee(s) and the Grantee(s) heirs and assigns against the Grantor(s) and the Grantor(s) successors, heirs and assigns and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS the Grantor's Hand and Seal this 31st day of March, 2015.

SIGNED, SEALED AND
DELIVERED IN THE PRESENCE OF:



G. Darryl Wieland Manhal Wieland
G. Darryl Wieland, by my true and lawful
Attorney in fact Manhal Wieland



Manhal Wieland
Manhal Wieland

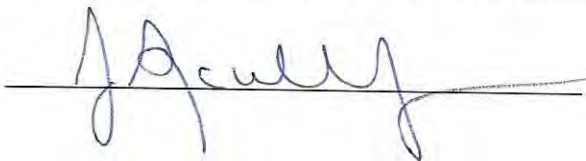
STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

)
)
)

PROBATE

Personally appeared before me the undersigned and made oath that he/she saw the within named Grantors sign, seal and as his/her/ their act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that he/she with the other witness subscribed above witnessed the execution thereof.



SWORN to before me this 31st day of March, 2015.

 (SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 8/30/2020

Deed Prepared By:
Frederick I. Hall, III, P.A.
301 Gibson Road
Lexington, SC 29072
(803) 957-1243
FILE: 17-0980

Book 2240-3178

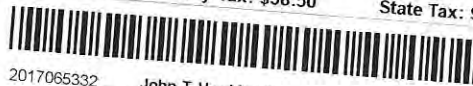
2017065332 09/01/2017 08:42:53:107

Fee: \$10.00

County Tax: \$38.50

Deed

State Tax: \$91.00



2017065332

John T. Hopkins II

Richland County R.O.D.

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

DEED TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, That **Sarah E. Dyches** (Hereinafter Called "Grantor (s)") in the State aforesaid, for and in consideration of the Sum of **Thirty Five Thousand and 00/100 (\$35,000.00)**, and to establish a joint tenancy with right of survivorship, in the State aforesaid have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Grantee(s),

Kevin P. O'Hara and Rebekah H. O'Hara
As **JOINT TENANTS**, With the **RIGHT OF SURVIVORSHIP**,
and not as Tenants in Common:

All that certain apartment known as Apartment Unit No. 14-G in Middleborough Horizontal Property Regime as shown on the Plans and Specifications therefor attached to that certain Master Deed executed by Middleborough, a Limited Partnership, dated October 14, 1981, and recorded in the records of Richland County at Deed Book D-593 at Page 92, amended by amendment to master deed dated December 21, 1984 and recorded in said Office in Deed Book D722 at Page 551 in the Office of the ROD for Richland County.

FOR INFORMATIONAL PURPOSES ONLY:

This being the identical property conveyed to Sara E. Dyches by Deed of Distribution of the Estate of Ann Cook Adams, dated July 18, 2017 and recorded July 18, 2017 in the Office of the ROD for Richland County in Record Book 2228, at Page 2056.

TMS # 11581-14-07

PROPERTY ADDRESS: 1825 St. Julian Place, Unit 14-G, Columbia, SC 29204

GRANTEE'S ADDRESS: 66 Legare Street, Charleston, SC 29401-2439

This Deed is also made subject to all zoning and other governmental regulations of the County of **Richland** and any other governmental agency (local, state or federal).

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to said premises, belonging or in any wise incident or appertaining;

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the Grantee(s) and the Grantee (s) heirs and assigns forever.

And the Grantor(s) do hereby bind the Grantor(s) and the Grantor's successors, heirs and assigns to warrant and forever defend all and singular the before-mentioned premises unto the Grantee(s) and the Grantee(s) heirs and assigns against the Grantor(s) and the Grantor(s) successors, heirs and assigns and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS the Grantor's Hand and Seal this 25th day of **August, 2017**.

Middleborough

1825 Julian Place, Columbia, South Carolina 29204
803-708-4890 Telephone 803-223-9468 Fax
middleborough@intermarkmgmt.com

July 14, 2016

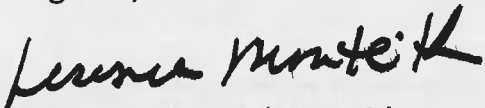
Mr. Kevin O'Hara
Unit 2J
1825 St. Julian Place
Columbia, South Carolina 29204

RE: Unit 2J

Dear Mr. O'Hara:

It has been reported to the board that you have been using your unit as a hotel by letting it out on a daily or weekend basis. Please be informed that by doing so you are in violation of the Middleborough Condominium by-laws, which in pertinent part, state as follows: Art.XI A (1) " Apartments in Phase 1 shall be used only as residences." Accordingly, we ask that you immediately cease and desist from this commercial activity.

Regards,



Lesesne Monteith, President
Middleborough Board of Directors

Middleborough

Horizontal Property Regime



Rules and Regulations

Revised January 7th 2019

Index

I.	SECURITY	2
II.	RESIDENT AND STAFF RELATIONSHIPS	3
III.	MANAGEMENT RESPONSIBILITIES	4
IV.	VEHICLES – REGISTRATION AND PARKING	4
V.	COMMON AREAS – GENERAL	6
VI.	COMMON AREAS - ELEVATOR, LOBBIES & RESIDENT HALLWAYS.....	6
VII.	COMMON AREAS - COMMUNITY ROOM.....	7
VIII.	COMMON AREAS - SWIMMING POOL.....	7
IX.	COMMON AREAS - EXERCISE ROOMS	8
X.	COMMON AREAS – GROUND LEVEL	8
XI.	COMMON AREAS - TENNIS COURTS	9
XII.	PETS.....	9
XIII.	REPAIRS AND RENOVATIONS	9
XIV.	NOISE AND ODORS.....	12
XV.	MOVING AND APPLIANCE DELIVERIES.....	12
XVI.	BUILDING APPEARANCE	13
XVII.	TRASH AND RECYCLING.....	14
XVIII.	GUESTS AND RENTERS	14
XIX.	COMMUNICATIONS POLICY	15
XX.	MISCELLANEOUS	15
XXI.	SHORT TERM RENTALS.....	17
XXII.	GARAGE SITE PLANS	18

The rules outlined in this booklet are in place to ensure the peaceful enjoyment, maintenance thereof, and security of Middleborough's residents. The rules apply to all co-owners, residents, and guests and will be enforced by the Middleborough Horizontal Property Regime, its Board of Directors, and its employees. Charges, fines or costs associated with any violation of these Rules will be treated as an assessment, as defined in the Bylaws, unless otherwise specified. Co-owners may request a variance for any Rule that may require special consideration for specific circumstances.

The Rules and Regulations for the Middleborough Horizontal Property Regime contained here in supersedes and replaces any previously published revision thereof.

From time to time the Middleborough Horizontal Property Regime Board may update these Rules and Regulations. Such updates will be approved by the Board at an open meeting and shall be binding and enforceable by the Regime.

A co-owner is a person who owns the condominium unit and pays the regime fees, assessments, and property taxes. A resident is a person who resides in the condominium. Residency is established by receiving mail at Middleborough under the unit number occupied and paying utility costs and other related expenses for the unit. A guest is a person whose mailing address is not that of any Middleborough unit and who is temporarily housed for any length of time in a co-owner's or resident's unit. A tenant is a person who is leasing any of the commercial spaces at Middleborough.

I. SECURITY

- A. The security and quiet enjoyment of all co-owners/residents (hereto known as residents) is a primary goal of Middleborough management. Every resident should be courteous to their neighbors and considerate of their rights and expectations while living at Middleborough.
- B. Middleborough is a “Crime Watch” area and residents should report immediately any suspicious behavior or activity in or outside the building to the security officer or management.
- C. All entrances to the building will be secured at 9:00 p.m. each evening until 7:00 a.m. the following morning. Residents have access to the building at all times; unaccompanied guests and all workers must *sign in* prior to being allowed into residential areas of the building.
- D. Deliveries may be made to residential areas of the building provided that the resident has notified the security officer on duty that a delivery is expected, or the security officer is able to confirm by phone that the resident is home to take the delivery. The delivery agent must sign in and present a photo ID to the security officer on duty before being allowed to board an elevator.
- E. Contractors *bringing equipment into the building must enter and leave the building using the ground floor loading entrance*. Contractors will not be allowed into the residential areas of the building without specific permission /authorization of the resident in whose unit work is being done. All contractors are required to sign in; *further, they must present a photo ID to the security officer on duty if asked*.
- F. Any activity prohibited by law is strictly forbidden on Middleborough property and should be reported immediately.
- G. Customers and clients of commercial businesses of Middleborough are not permitted in the residential areas of the building. Further, those customers and clients may not use the pool or the pool deck.
- H. Key fobs are used to control access to locked areas that residents have the right to enter. Fobs may be purchased at the management office.
- I. Key fobs are registered to the current holder, and conveyance after a unit sale or change of leaser should be communicated to the management office so that they fob will be registered with the new resident. Failure to communicate may result in the fob being deactivated without warning.

J. Key fobs not used at least once every 6 months will be automatically deactivated. Fobs can be reactivated by residents by visiting the management office.

II. RESIDENT AND STAFF RELATIONSHIPS

A. The staff of Middleborough, including the site manager, the security officers and maintenance personnel, are all employed under contracts with the Middleborough Horizontal Property Regime. They are hired to perform specific duties and functions as outlined in their respective contracts. Residents are asked to treat the staff with respect and common courtesy. A professional, business-like work environment is expected. The US Department of Labor laws governing appropriate work environments will apply. Residents violating the labor law will receive a written warning letter at a first offense, with subsequent violations being referred to the regime attorney.

B. The site manager is responsible for the day-to-day management of the facility and their time is extremely valuable given the issues to be dealt with on a daily basis. A professional decorum must be maintained between the site manager and the residents. Chatty discussions should be avoided. If a resident has a question or problem that needs to be addressed by management, this should be communicated concisely.

C. The security officers are on site to provide limited assistance to the residents of Middleborough and to ensure the building is under watch twenty-four hours a day. Security officers have a serious responsibility for the security and safety of residents of Middleborough. These officers are not expected or required to provide personal services for residents.

D. Maintenance personnel have specific duties to perform in the building and are not to be directed by residents to perform any service or repairs except in an emergency. Maintenance personnel are instructed to perform those duties as directed by the Site Manager or Officer of the Regime.

E. Management employs a maintenance engineer to service the physical plant. In-unit service will be provided for emergency repairs that, if not done, would impact abutting units. Residents are billed for such in-unit emergency services. A resident needing any emergency service gives tacit approval for admittance to their unit.

III. MANAGEMENT RESPONSIBILITIES

- A. The Board of Directors hires a management company to assist with the day-to-day operation of Middleborough and to advise the Board on various issues. *Residents should communicate directly with the site manager to report leaks, rules violations, and issues that affect the common elements such as housekeeping, grounds maintenance, and building maintenance.* If the management office is closed, and the issue poses a danger to property or an individual, the security officer on duty should be notified.
- B. Issues that need to be addressed to the Middleborough Board of Directors should be communicated in writing to the Board president via the management office using either a hard copy letter or email.
- C. The management company is expected to carry out the policies set by the Board. If a resident disagrees with a policy, the resident should bring the issue to the attention of the Board at an open Board meeting or submit a letter to the Board via the management office.
- D. Resident to resident disputes should be handled between the parties involved. Management is not required or encouraged to get involved in any such dispute residents are having with their neighbors.

IV. VEHICLES – REGISTRATION AND PARKING

- A. Residents must register their vehicles (including mopeds, motorcycles, boats, trailers, and RV's) with the site manager within five (5) days of moving in. A numbered sticker will be issued and must be placed on the vehicle in the location designated on the sticker application directions. Should the resident change vehicles or license plates, a new sticker is required. If a resident moves, the Middleborough registration is no longer valid.
- B. Residents are assigned one parking space per unit according to site plan at the end of this document.
- C. Gate remotes used to gain entrance to the garage's first level and the reserved parking spaces may be purchased at the management office.
- D. Vehicle registration forms are available at the management office.

- E. The parking area located on the south side of the building is reserved for handicapped parking as indicated by the striping and signage. No parking is allowed in handicapped parking spaces without a valid current handicapped parking permit. Violators' cars will be towed without notice and at the owner's expense. Violators are subject to a \$500 fine from the city as well.
- F. Stopping immediately adjacent to and in front of the south entrance is not allowed except for loading and unloading passengers. Drivers must remain in the vehicle in this area. This road is designated as a fire lane to accommodate emergency vehicles. Cars parked there may be towed without notice.
- G. The area located at the north end of the building is the service entrance and is designated exclusively for loading and unloading. There is a thirty (30) minute parking limit in this lot. The lot is to be used solely for deliveries and for moving into and out of the building. Residents needing more time than 30 minutes to load or unload their vehicle must get authorization from the security officer to exceed the parking limit. Towing in this lot is enforced if a resident blocks the dumpsters, recycling bins, or exceeds the 30-minute parking limit.
- H. Guest and resident parking is provided in the west lot above the swimming pool. Residents must notify management if any long-term guests will need parking. It is the responsibility of the resident to inform their guests of the parking regulations.
- I. The east lot is designated for commercial vehicles and the commercial tenants on the ground and first floors. Residents choosing to park in this lot do so at their own risk, as towing may be enforced at any time by the commercial tenants.
- J. Head-in parking is recommended for all vehicles using the outdoor parking lots, and is required for trucks, vans, and SUV's in order to keep sidewalks clear and lawn areas free for groundskeeping.
- K. Residents must register the vehicles of their long-term (one-month or longer) guests with the management office.
- L. Parking lots are not to be used for any purpose other than parking.
- M. Motorcycles, mopeds, and bicycles are not allowed to be parked or be driven on sidewalks, grass, or delivery areas.
- N. Vehicles are not to be washed or serviced anywhere on the Middleborough premises.

O. Vehicles that are inoperable or chronically neglected (including but not limited to flat tires) and vehicles that do not have current valid registration may not be parked anywhere on Middleborough property. Such vehicles are subject to towing after the vehicle has been tagged by the security office for 24 hours.

P. Bicycles can be stowed on the first or second level of the garage in the racks provided.

V. COMMON AREAS – GENERAL

A. Residents and their guests must respect all common areas

B. Playing and/or loitering in the hallways, elevators, community rooms, and lobby is not permitted.

C. Individuals using any of the common areas must properly dispose of their trash and litter and replace any furnishings they have moved.

D. Shirts and shoes must be worn in common areas except at the pool and in the sauna rooms.

E. Sidewalks, entrances, elevators, hallways, tennis courts, pool decks and stairways must not be obstructed and must only be used for the purpose intended.

F. Commercial tenants and their customers, clients, and guests are expected to conduct their business in a quiet, professional manner and with respect and consideration for Middleborough residents at all times.

G. Any commercial vendor or client must be accompanied by a resident if they are in the reception area.

H. Smoking, including vaping, is prohibited in all common areas including the pool.

VI. COMMON AREAS - ELEVATOR, LOBBIES & RESIDENT HALLWAYS

A. Elevator areas and hallways must remain free of obstacles that could potentially block access to individual units or hinder emergency personnel and equipment.

B. Foyers on the residential floors may be decorated if the majority of the residents on the floor agree. The cost of decorating is the responsibility of the floor's residents. The Board and management are not responsible for regulating the decor in the hallway foyers.

- C. Doors to individual units must remain closed to avoid noise, smoking and cooking odors in the hallways.

VII. COMMON AREAS - COMMUNITY ROOM

- A. The community room is a shared facility. Residents may book the room for private functions once a month at no charge, provided they submit a \$50 deposit which will be returned if the room is left clean and the furniture properly positioned. Residents are responsible for any damage incurred during the time of their use. Residents should ask management or a security officer to verify the room is being left in acceptable condition.
- B. The community room has two sections which may be booked independently or together as a single unit. The Fire Marshal has rated the community room for a combined maximum of 35 people.
- C. The security officer will maintain a calendar to record all community room reservations and shall note the date, time, and purpose of the event, as well as the name and unit number of the resident making the reservation. All reservations must be made in person through the security office at least 24 hours prior to the event.
- D. The resident making the reservation must be in attendance at the function.
- E. The resident is responsible for cleaning the community room immediately following the end of the function.
- F. By making reservations, the resident agrees to: 1) repair or replace any damage or missing property of the Regime and 2) indemnify and hold harmless the Regime against any loss or injury in connection with the use of the community room.
- G. Residents may use the community room for personal activities such as reading, study, or small gatherings provided another resident has not booked the room for a function.

VIII. COMMON AREAS - SWIMMING POOL

- A. The swimming pool and adjacent areas are for the exclusive use of residents and their guests. Guests must be accompanied by a resident at all times. Residents and their guests must wear a pool pass which may be purchased at the management office.
- B. Residents may purchase up to 6 passes annually, with a per unit limit of 6 passes.
- C. There is no lifeguard on duty at the pool. All persons use the pool at their own risk.

D. Everyone using the pool must observe the rules posted on the signage in the pool area. Some specific rules include the following:

1. Glass containers are not permitted in the pool area.
2. Activities that pose a danger to anyone in the vicinity of the pool are prohibited. Such activities include running, pushing, and diving.
3. Loud or boisterous activity or music that may disturb others is not allowed.
4. Proper swimming attire must be worn in the pool area. Shirts and footwear should be worn entering and exiting the pool area. No resident or guest should enter the building after swimming wearing wet clothing.
5. All personal items such as floats, toys, and pool noodles must be removed from the pool area when the person who brought the items leaves.
6. The pool may not be reserved for private parties.
7. The Board has authorized the security officer on duty to monitor the pool as often as necessary for unauthorized users. People in the pool area will be asked to show their pool pass. If they do not have the proper pass, or if they are unaccompanied guests, they will be required to leave.
8. If a pool umbrella is used, the resident must ensure that it is closed before leaving the pool area.

IX. COMMON AREAS - EXERCISE ROOMS

- A. Exercise and sauna rooms are restricted to their respective genders and are located on the first floor at the north end of the building. The rooms are open 24 hours a day. Access is gained using the resident's key fob.
- B. Only residents and their guests may use the facilities.
- C. Exercise equipment will not be brought into or removed from the exercise rooms without prior approval of management. Residents should report broken or unusable equipment to the site manager.
- D. Building dress codes apply when entering and leaving the exercise rooms.

X. COMMON AREAS – GROUND LEVEL

- A. Grocery carts are provided for the convenience of the residents and should be returned to the ground level immediately after each use. Contractors shall not use the black "Middleborough" carts, they can use any other branded cart.

- B. Coin operated washer and dryers are available for resident's use. Debit and credit cards may also be used.
- C. Beverage and snack vending machines are located on the ground floor.

XI. COMMON AREAS - TENNIS COURTS

- A. The tennis court is not available at this time.

XII. PETS

- A. Presently, only cats are allowed as pets. Birds, dogs, and exotic pets are not allowed.
- B. All pets must be registered with management office. *Two pets are allowed per unit.*
- C. A waiver for more than two pets or for a pet currently not allowed under the current regulations may be requested. In granting waivers, the Board will consider the current pet population, the resident's past ability to care for a pet and other factors unique to the request.
- D. Pet owners must transport their pets in appropriate carriers when in the common areas of the building. Pets being taken for walks must be leashed and must enter and exit the building through the loading dock on the ground floor.
- E. Pet litter must be double bagged before depositing in the trash chute or must be carried to the dumpster. Residents depositing pet litter directly into the trash chute will be fined \$10 for each violation and may be billed for the cost of cleaning and disinfecting the chute. After two violations, the owner's pet privileges will be revoked.

XIII. REPAIRS AND RENOVATIONS

- A. Plans for renovations in a residential or commercial unit must be submitted to management for review and written approval of those plans must be obtained before work begins. Work will be inspected in the presence of the co-owner by management when the work is completed.

B. MIDDLEBOROUGH WAS CONSTRUCTED PRIOR TO ASBESTOS BEING PROHIBITED IN BUILDING MATERIALS. BECAUSE ASBESTOS MAY BECOME AN ISSUE IN RENOVATIONS (I.E., DISTURBANCE OF ANY WALL, CEILING OR FLOOR SURFACE), THE BOARD OF DIRECTORS HAS REQUIRED THAT CO-OWNERS WISHING TO RENOVATE THEIR UNITS OBTAIN AN ASBESTOS SURVEY TO ENSURE THAT ANY ABATEMENT THAT MAY BE REQUIRED IS ADDRESSED PRIOR TO THE START OF CONSTRUCTION.

C. All work, both repair and renovation, must be conducted in a responsible and workmanlike manner. Co-owners must use licensed contractors for any work requiring a permit or any work for which the State requires licensed contractors. A list of contractors and sub-contractors is available at the management office. Any contractors on this list have evidenced willingness to work at Middleborough; however, neither the Regime nor Management accepts any responsibility for the quality of their work or their business practices.

D. Obtaining permits for renovations is the responsibility of the co-owner. Management may notify the city of Columbia to schedule an inspection if the co-owner has not followed proper protocols. The co-owner is responsible for paying any fines and/or court costs associated with violations the inspector uncovers.

E. No repair, maintenance, or modification of the Common Elements is permitted without written approval of the Board.

F. All contractors are required to sign in and present a photo ID at the security desk before they are allowed to proceed to the residential units.

G. Work associated with renovation and repair is limited to the hours of 8:30 a.m. to 6:00 p.m., Monday through Saturday, unless Board approval has been obtained for extended work hours. No work is permitted on holidays*.

*Holidays are: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

H. Residents are responsible for damage to any common area caused by their contractor and shall pay for the cost of replacement or repairs made therein, including plumbing fixtures, drain pipes, line stoppages, overflows, carpet, elevators and the like.

- I. Contractor's supplies, tools, and equipment must be brought into the building through the service entrance and taken to the individual unit via the service elevator only. Contractor vehicles are not permitted to park at the service entrance except to load and unload tools and supplies. Residents are responsible for reminding their contractors that there is a 30-minute parking limit at the service entrance.
- J. Contractors must remove construction debris and discarded appliances from the premises. Under no circumstances should construction debris be placed in the dumpster. Residents must ensure that their contractor properly removes all materials and debris from the common areas prior to leaving Middleborough. If the contractor fails to remove the debris, the resident must clean up what is left by their contractor within two (2) hours of the contractor's departure.
- K. HVAC units that need to be replaced must be located inside the respective utility area/closets. Condensing unit installations are not permitted on the balcony areas (outside). Only qualified and licensed contractors should replace air conditioning systems. Obtaining permits governing such replacements is the responsibility of the co-owner. Regular maintenance of the unit's HVAC system, including small motor replacement, filter replacement, or thermostat modifications does not require approval or permitting.
- L. Washer/dryer installations in individual units are not allowed. All existing washer/dry installations may be allowed to remain provided they meet code requirements and the co-owner agrees to periodic inspections as needed by management.
- M. Penetration of structural walls (concrete walls) is not allowed without prior approval of management. Plans for this work must be reviewed and approved by a licensed and qualified structural engineer at the resident's expense prior to any work being done.
- N. No electrical or plumbing modifications may be made by a resident without prior approval of management. Only licensed, qualified electricians and plumbers will be hired for such work. Proper permits must be obtained from the City of Columbia and posted on the door or next to the door outside of the unit. Minor repairs, such as unstopping a drain-line, do not require approval. Any electrical or plumbing work that is located inside a wall must be permitted and inspected.
- O. The screening and/or glassing in of balcony areas must be approved by management prior to the modification.

XIV. NOISE AND ODORS

- A. Any work in an individual unit that creates a vibration or noise must be limited to the hours of 8:30 a.m. to 6:00 p.m., Monday through Saturday. Work on holidays* is prohibited.
- B. Residents should be mindful of normal sounds associated with their occupancy, such as TV and music volume and housekeeping sounds such as vacuuming before 8:30 a.m. and after 9:00 p.m.
- C. Limiting offensive odors, (e.g., cigarette and cigar smoke, toxic or dangerous fumes, and strong cooking smells) is the responsibility of every resident. If any resident, guest or contractor working in a unit causes any odor that may be dangerous to the health of another resident, the cost of any necessary remediation will be billed to the responsible party and the resident will be subject to a fine up to \$10.00 per day that the odor is present.
- D. Doors to individual units should remain closed to prevent noise and odors from migrating into the hallways.

XV. MOVING AND APPLIANCE DELIVERIES

- A. When moving large objects, the service elevator must be used, and the objects must be brought in through the service entrance. Grocery carts are available near the vending machines for residents who have multiple packages or large deliveries. The carts must be returned to the ground floor immediately after use.
- B. Residents who are moving in or moving out must schedule their move with the security officer at least 24 hours before the move is to occur. Moving hours are between 8:30 a.m. and 6:00 p.m., Monday through Saturday. Moving on Sunday and holidays* is allowed only with management's approval. No move in or out may begin later than 1:00 p.m.
- C. Residents are responsible for any damage incurred to the common elements while moving their possessions. Common elements include, but are not limited to, the elevator, walls, carpeting, ceiling tiles, and service entrance doors.

- D. A \$100.00 deposit is required when using the service elevator for moving in or moving out. The deposit may be in the form of cash or check when moving in but must be in cash when moving out. The deposit will be eligible for return to the resident if no damage to the elevator is found, and if a resident who is moving out has returned all fobs and garage remotes. The amount of the deposit will be reviewed from time to time by the Board and adjusted if warranted.
- E. Movers, contractors, and delivery personnel must share the service elevator with each other. No single agent may lock the elevator to reserve it exclusively.
- F. Residents requiring the use of a service area parking space for longer than 30 minutes are required to notify the security officer on duty to obtain permission. Vehicles impeding the smooth flow of deliveries will be towed without notice at the owner's expense.
- G. Multiple vehicles for the same move will not be permitted in the service lot if those vehicles impede normal traffic or they create an unsafe condition for residents.

XVI. BUILDING APPEARANCE

- A. Nothing (including but not limited to clothes, rugs, sheets, towels, and blankets) may not be hung from the balcony railing at any time.
- B. Only white or off-white manufactured or designed window treatments are permitted. All colored drapes must have a white or off-white lining.
- C. Temporary balcony enclosures such as shades and curtains must be adequately secured. Management will determine if any item that hangs at the balcony's edge poses a hazard and if so, will request removal of such an item.
- D. Nothing should be thrown from or swept off the balcony including plant debris, dust/dirt, and smoking materials.
- E. No signs or advertisements are allowed to be posted on the premises
- F. All residents must exercise care in cleaning and maintaining their individual balcony areas. Plants must have saucers to retain water. Hanging items such as plants and bird feeders must be hung 3 feet from the railings. Windsocks designed to keep pigeons away are permitted, but banners are not allowed.
- G. Balconies are not to be used as storage areas for hazardous materials or items that would diminish the esthetic décor of the building. The resident will be responsible for accidents, destruction of property, or littering if items blow off their balconies.

- H. Only electric grills are allowed on the balconies.
- I. The management office will notify the resident of any violation, allowing five (5) business days to correct the problem. After five (5) business days, a fine of up to \$10.00 per day will be levied until corrective action is taken.

XVII. TRASH AND RECYCLING

- A. Trash must be bagged and secured in 13-gallon tall kitchen trash bags before being placed in the trash chute. Do not leave trash on the floor in the trash room or on the ground besides the dumpster or recycling bins.
- B. Trash may be deposited in the chute only between the hours of 7:00 a.m. and 9:00 p.m. daily.
- C. Boxes, breakable items including glass containers and bottles, and items too large or long to fit into proper trash bags must be carried to the dumpster or recycling bins located outside the service entrance.
- D. Boxes must be flattened and carried to the box recycling area next to the dumpsters. If boxes are not flattened, the city will not remove them from the premises.
- E. Cooking oils and grease should be collected in a disposable container and placed in the trash to avoid clogging kitchen drains.
- F. Drano and other products corrosive to pipes may not be used to unclog drains. Residents must call their own plumber to make repairs on their sinks, toilets, and drains.
- G. Residents may not leave furniture, mattresses or other large items they wish to discard in the loading dock area. Consult management for the proper procedure to have these items removed from your unit or arrange for private removal of the items to a dump/recycling site.

XVIII. GUESTS AND RENTERS

- A. Unaccompanied guests and all workers must *sign in* prior to being allowed into residential areas of the building each time they visit.
- B. If the security officer on duty has not been notified by a resident to allow guests to proceed to their unit, the security officer must call and speak with the resident when a guest arrives. Identification may be required of visitors. No visitor will be allowed to proceed to the residential floors without specific permission from the resident.

- C. Co-owners electing to rent their units must arrange for the transfer of unit keys, fobs, gate remotes, list of rental rules, and other rental accoutrements directly from the co-owner to the guest/renter. The security officer is not a hotel concierge and is prohibited from assisting renters by acting as an intermediary.
- D. All of the rules and regulations that are in effect for co-owners apply to guests and renters with regard to noise, odors, parking, and comportment.
- E. The use of the swimming pool is off limits for guests and renters who do not have a key fob registered in their name unless the co-owner is present in the pool area with the guest.
- F. All renters are prohibited from sub-letting their unit unless authorized by the co-owner.
- G. Accommodation rentals are prohibited, and residential units may only be used for residential purposes.

XIX. COMMUNICATIONS POLICY

- A. The management office uses an email hosting service to keep residents up-to-date on policy changes, amendments to the rules and regulations, emergency conditions in the building or on the property, and reminders of meetings. It is up to each resident to authorize the use of their email address in order to participate in this service. Authorization is given when the email address is included on the Directory Form each resident must fill out when moving into the building.
- B. Paper notices are posted on enclosed announcement boards outside the management office, at the mailboxes, and on the ground floor near the laundry room.
- C. Notice of the annual meeting and any special meetings will be mailed to the co-owner of record at the time of the mailing.

XX. MISCELLANEOUS

- A. Middleborough uses an exterminating company to treat on a quarterly basis the residential units, common areas, and commercial spaces in the building. The quarterly inspection and treatment are designed to prevent insect infestation. Residents must inform the management office if they wish to opt out of treatment, and if they wish to make alternate arrangements for a private company to treat their unit.

- B. Any pest infestation should be reported to management as quickly as possible so that the appropriate steps may be taken to limit the spread of the problem.
- C. Each resident must equip their unit with working smoke detectors as dictated by the Fire Marshall.
- D. Insurance: The Regime's insurance does not cover the interior surfaces, the contents and improvements, or liability issues for individual units. Residents are responsible for obtaining a condominium unit owners policy (also known as an HO-6 policy) for their respective units. This policy should include adequate property, personal property and liability coverage as determined by the unit owner's insurance agent in accordance with Article IX, Section G of the Middleborough Bylaws which states:

Insurance by Co-owners. Each Co-owner shall be responsible for obtaining such amounts of the following types of insurance as he deems necessary or desirable:

- 1. Hazard insurance on his Apartment for his own benefit;**
- 2. Hazard insurance on the contents of his Apartment and on improvements made to his Apartment; and**
- 3. Liability insurance covering accidents occurring within his Apartment**

Any Co-owner who obtains hazard insurance on his Apartment for his benefit shall within thirty (30) day of obtaining the same deliver to the Board of Directors a certificate evidencing such policy of insurance.

- E. The Regime further urges owners to include in any coverage a loss provision that is not covered by the Master Policy.
- F. Special Note: Damage to any unit, including water, smoke, or odor, is the responsibility of the resident of the unit from which the problem originates. Any costs to repair damage caused by water, smoke, or odor must be paid by the resident of the unit where the source of the damage originates. For example, if a unit is damaged by water coming from another unit, the resident of the unit from which the problem originates is responsible for all the costs incurred to repair the damaged unit.

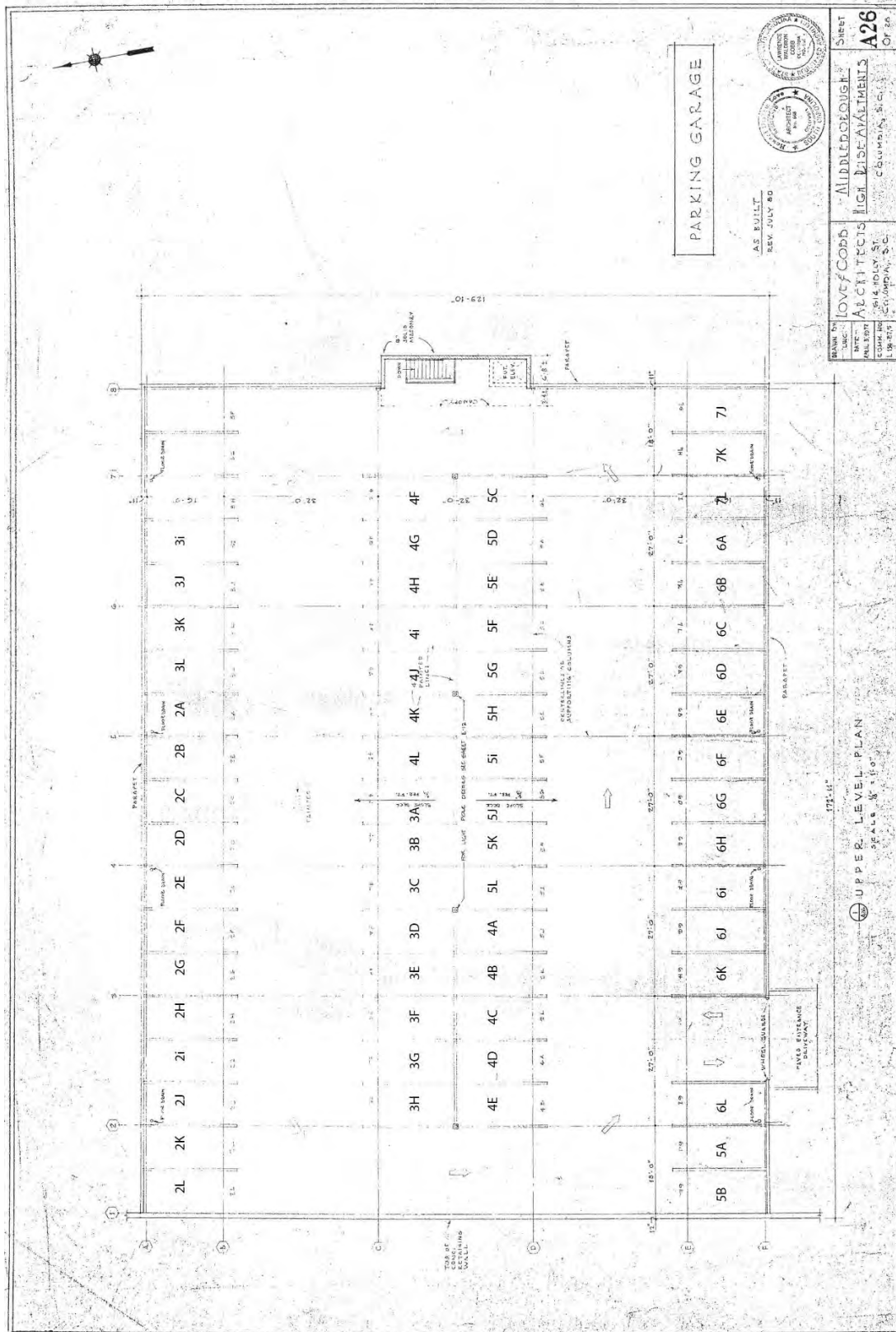
- G. Packages accepted by the security officer on duty must be signed for when the resident picks up the package. Residents will be notified by phone of perishable deliveries so that they may pick up the package as quickly as possible after it is delivered. If a resident knows that a perishable delivery is expected, the resident should notify the security officer to be on the alert for the package.
- H. Use of drones and other unmanned motorized aircraft is not allowed above the Middleborough HPR property or in close proximity of the building without prior written management consent. Violation of this rule will result in an assessment fine to the co-owner of the operator's residence.
- I. The demand notice for the regime fee, also called the annual assessment, is made at the time the budget is approved by the co-owners at the annual meeting. Payment may be made annually, semi-annually, quarterly, or monthly. A separate demand letter is not required except for assessments that are in addition to the annual regime fee. The late fee and penalty structure associated with late payments is outlined in the Bylaws
- J. Discharge of firearms, BB guns, air guns, and fireworks is not permitted on the premises.

XXI. SHORT TERM RENTALS

- A. Pursuant to its authority granted by Article II of the Association Bylaws, the Board of Directors has concluded that the offering of rental of any (residential) unit for a term of less than thirty (30) days shall be deemed a non-residential use of the property and prohibited. For purposes of this resolution, "non-residential" shall be defined as the offering, advertising, using or renting of a unit as a lodging establishment for the purpose of collecting rent or remuneration for a period of thirty days or less. This prohibition specifically applies to AirBNBs, VRBOs or any similar service or advertising vehicle that markets rentals for less than thirty (30) days.
- B. For each violation of this Regulation, a fine of \$10 per day as stipulated in the Bylaws shall be imposed.

XXII. GARAGE SITE PLANS

A. Upper Level Plan



MIDDLE TOWER LEVEL PLAN
 SCALE 1/8" = 1'-0"
 1/8"

PROJECT INFORMATION:
 SHEET NO. 100
 DATE: 10/1/54
 DRAWN BY: J. H. HARRIS
 CHECKED BY: J. H. HARRIS
 PROJECT: MIDDLE TOWER
 LOCATION: COLUMBIA, S. C.

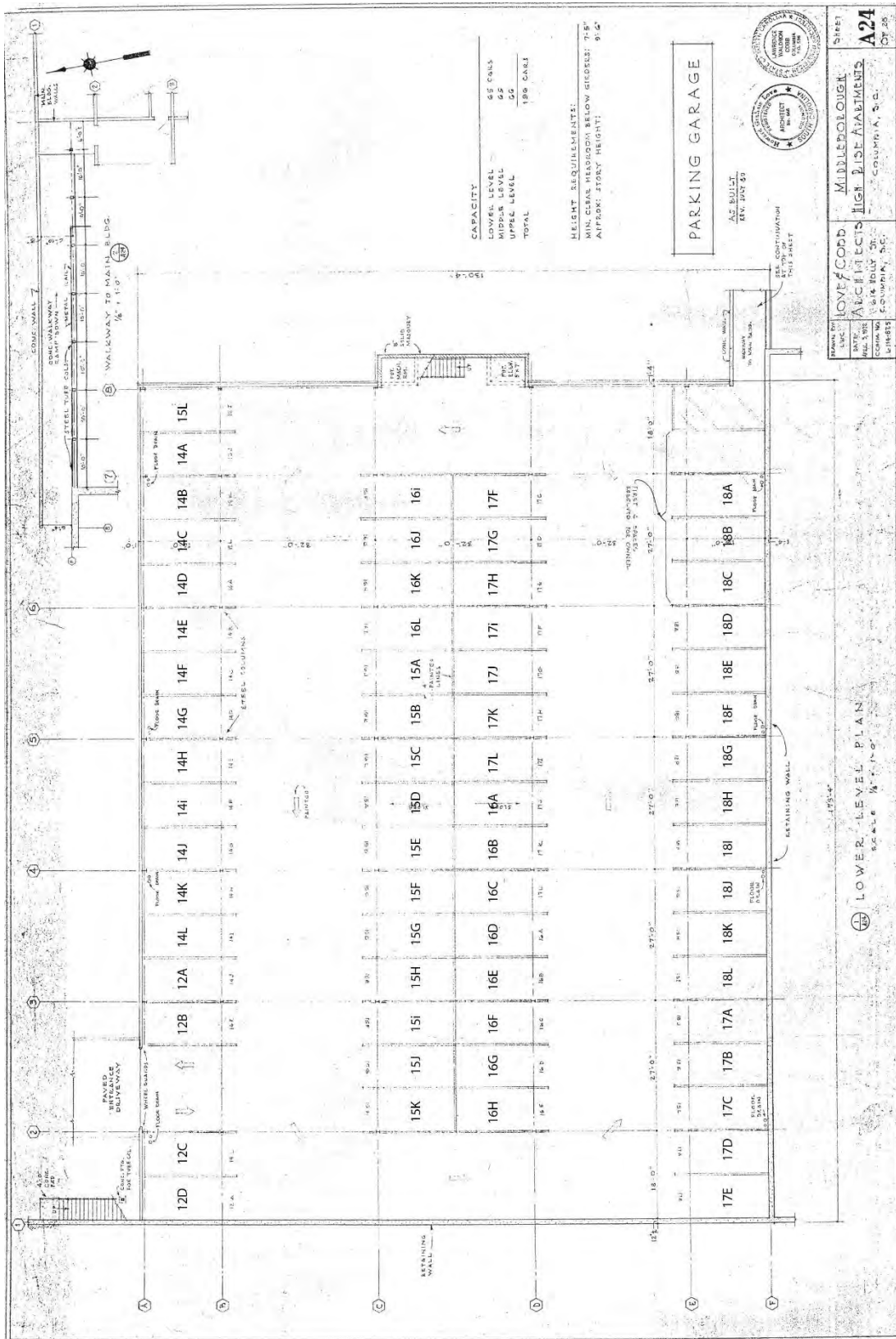
DESIGNER:
 J. H. HARRIS & ASSOCIATES
 ARCHITECTS
 100 N. MAIN ST.
 COLUMBIA, S. C.

CLIENT:
 MIDDLE TOWER
 100 N. MAIN ST.
 COLUMBIA, S. C.

REVISIONS:
 1. 10/1/54
 2. 10/1/54
 3. 10/1/54

NOTES:
 1. ALL DIMENSIONS ARE IN FEET AND INCHES.
 2. ALL WALLS ARE 12" THICK UNLESS NOTED OTHERWISE.
 3. ALL FLOORS ARE 4" CONCRETE ON 8" GRAVEL.
 4. ALL ROOFS ARE 4" CONCRETE ON 8" GRAVEL.
 5. ALL EXTERIOR WALLS ARE 12" THICK UNLESS NOTED OTHERWISE.
 6. ALL EXTERIOR DOORS ARE 36" WIDE UNLESS NOTED OTHERWISE.
 7. ALL EXTERIOR WINDOWS ARE 36" WIDE UNLESS NOTED OTHERWISE.
 8. ALL EXTERIOR LIGHTS ARE 12" DIA. UNLESS NOTED OTHERWISE.
 9. ALL EXTERIOR VENTS ARE 12" DIA. UNLESS NOTED OTHERWISE.
 10. ALL EXTERIOR RAILS ARE 4" DIA. UNLESS NOTED OTHERWISE.
 11. ALL EXTERIOR HANDRAILS ARE 4" DIA. UNLESS NOTED OTHERWISE.
 12. ALL EXTERIOR STAIRS ARE 4" DIA. UNLESS NOTED OTHERWISE.
 13. ALL EXTERIOR ELEVATORS ARE 4" DIA. UNLESS NOTED OTHERWISE.
 14. ALL EXTERIOR ESCALATORS ARE 4" DIA. UNLESS NOTED OTHERWISE.
 15. ALL EXTERIOR RAMPWAYS ARE 4" DIA. UNLESS NOTED OTHERWISE.
 16. ALL EXTERIOR DRIVEWAYS ARE 4" DIA. UNLESS NOTED OTHERWISE.
 17. ALL EXTERIOR PARKING SPACES ARE 12' X 24' UNLESS NOTED OTHERWISE.
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 107. ALL EXTERIOR KITCHEN SHAFT SHAFT SHAFT SHAFT SHAFTS ARE 12' X

C. Lower Level Plan



STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Kevin O'Hara and Rebekah H. O'Hara,)

C/A No.: 2019-CP-40-01231

Plaintiffs-Petitioners,)

ANSWER AND COUNTERCLAIM

vs.)

Middleborough Horizontal Property)
 Regime,)

Defendant-Respondent.)

Middleborough Horizontal Property Regime ("Defendant" or "Middleborough"), by and through its undersigned counsel, hereby answers the Complaint filed by Kevin O'Hara and Rebekah H. O'Hara ("Plaintiffs") as follows:

FOR A FIRST DEFENSE

1. Defendant denies the allegations contained in each and every paragraph of Plaintiffs' Complaint not specifically admitted, qualified, or explained herein.

2. Answering the allegations contained in Paragraph One (1) of Plaintiffs' Complaint, Defendant admits Plaintiffs are the owners of condominium units 2J and 14G which are part of the Middleborough Horizontal Property Regime, which are within the city limits of Columbia, South Carolina. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the Plaintiffs' residence in Richland County, South Carolina.

3. Defendant admits the allegations contained in Paragraphs Two (2), Three (3), Four (4), and Five (5) of Plaintiffs' Complaint.

4. Answering the allegations contained in Paragraph Six (6) of Plaintiffs' Complaint, Defendant admits Plaintiffs are the owners of condominium units 2J and 14G. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in said paragraph.

5. Defendant admits the allegations contained in Paragraph Seven (7) of Plaintiffs' Complaint upon information and belief.

6. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs Eight (8) and Nine (9) of Plaintiffs' Complaint.

7. Defendant admits the allegations contained in Paragraph Ten (10) of Plaintiffs' Complaint.

8. Answering the allegations contained in Paragraph Eleven (11) of Plaintiffs' Complaint, Defendant craves reference to the South Carolina Horizontal Property Act ("SCHPA") and denies any allegations inconsistent therewith.

9. Defendant denies the allegations contained in Paragraph Twelve (12) of Plaintiffs' Complaint. Answering further, Defendant craves reference to the Master Deed and denies any allegations inconsistent herewith.

10. Defendant denies the allegations contained in Paragraph Thirteen (13) of Plaintiffs' Complaint as stated. Defendant admits Plaintiffs have leased condominium unit 2J over Defendant's objection and seeks to do the same with unit 14G.

11. Answering the allegations contained in Paragraph Fourteen (14) of Plaintiffs' Complaint, Defendant craves reference to the Master Deed and the SCHPA and denies any allegations inconsistent therewith.

12. Answering the allegations contained in Paragraph Fifteen (15) of Plaintiffs' Complaint, Defendant craves reference to the July 14, 2016 letter and denies any allegations inconsistent therewith.

13. Defendant denies the allegations contained in Paragraph Sixteen (16) of Plaintiffs' Complaint as stated. Defendant admits Plaintiffs' attorney wrote a response to the letter

referenced in the preceding paragraph; however, Defendant denies that it declined an invitation to meet with Plaintiffs.

14. Defendant denies the allegations contained in Paragraph Seventeen (17) of Plaintiffs' Complaint as stated.

15. Defendant admits the allegations contained in Paragraph Eighteen (18) of Plaintiffs' Complaint but denies that the revision constituted a change as it merely clarified existing restrictions against commercial use.

16. The allegations contained in Paragraph Nineteen (19), including subparts (i) through (v), of Plaintiffs' Complaint merely state legal conclusions and therefore, no response is required. To the extent a response is required, the allegations are denied.

17. Defendant admits the allegations contained in Paragraph Twenty (20) of Plaintiffs' Complaint.

18. Defendant denies the allegations contained in Paragraph Twenty-One (21) of Plaintiffs' Complaint.

19. The allegations contained in Paragraph Twenty-Two (22) of Plaintiffs' Complaint merely state a legal conclusion that does not require a response from Defendant. To the extent a response is required, the allegations are denied.

20. Defendant admits so much of Paragraph Twenty-Three (23) of Plaintiffs' Complaint as may be construed to allege that the use of condominium units for non-residential purposes is prohibited and will continue to be prohibited.

21. Defendant admits so much of Paragraph Twenty-Four (24) of Plaintiffs' Complaint as may be construed to allege that the use of the common areas, including the

swimming pool, is limited to residents and their guests, according to a long-standing policy adopted by Defendant.

22. The allegations contained in Paragraphs Twenty-Five (25), Twenty-Six (26), Twenty-Seven (27), Twenty-Eight (28), and Twenty-Nine (29) of Plaintiffs' Complaint merely state legal conclusions and therefore, no response is required. To the extent a response is required, these allegations are denied. Answering further, Defendant is informed and believes that any injunction would be detrimental to Defendant and would cause irreparable harm to Defendant and Middleborough residents.

23. The allegations contained in Paragraphs Thirty (30) and Thirty-One (31) of Plaintiffs' Complaint merely state legal conclusions and therefore, no response is required. To the extent a response is required, these allegations are denied.

FOR A SECOND DEFENSE

24. Plaintiffs' Complaint fails to state facts sufficient to constitute a cause of action and should be dismissed pursuant to Rule 12(b)(6), SCRCP.

FOR A THIRD DEFENSE

25. Defendant will show that at all times relevant to this action, it acted in good faith and without malice in its actions and in the best interest of the regime and its community.

FOR A FOURTH DEFENSE

26. Defendant reserves the right to raise additional affirmative defenses based upon addition evidence that may be discovered while this case is pending.

FOR A FIFTH DEFENSE AND BY WAY OF A COUNTERCLAIM
(Declaratory Judgment)

27. Defendant hereby realleges and incorporates herein by reference the preceding allegations in its Answer.

28. This counterclaim is brought pursuant to the South Carolina Declaratory Judgment Act, S.C. Code Ann. § 15-53-10, *et seq.* (Rev. 2005), and seeks a declaration that Plaintiffs' short-term rental of condominium units 2J and 14G for consideration constitutes a non-residential, commercial use of the units in violation of Middleborough's Master Deed and Bylaws.

29. Defendant is a horizontal property regime created under a Master Deed, executed October 14, 1981 and recorded November 12, 1981 in Book 593 at Page 92, pursuant to the SCHPA. The Middleborough Property consists of two phases: Phase 1 under the Master Deed consists of 192 residential apartments, including Plaintiff's condominium units 2J and 14G. A true and correct copy of the Master Deed is attached hereto as **Exhibit 1**.

30. Phase 2 was created by amendment to the Master Deed dated December 21, 1984, adding the first floor and basement as residential rental space and allowing use of those areas as residential rental space or as commercial or office space. A true and correct copy of the Amendment to the Master Deed is attached hereto as **Exhibit 2**.

31. Pursuant to Article II(C) of the Master Deed, Defendant's administration is governed by the Bylaws. A true and correct copy of the Bylaws is attached hereto as **Exhibit 3**.

32. Article X(B) of the Master Deed and SC Code §27-31-170 provide each Co-owner shall comply strictly with the Bylaws and with the administrative rules and regulations adopted pursuant thereto.

33. Article XB of the Master Deed further provides failure to comply with any of the same shall be ground for a civil action to recover any sums due for damages or injunctive relief, or both, maintainable by the Manager of the Board of Directors.

34. Article XI of the Bylaws mandates that “Apartments in Phase 1 shall be used **only as residences**” (emphasis added).

35. In accordance with the authority granted to it under the Master Deed and Bylaws, on January 7, 2019, the Board of Directors enacted Regulations pertaining to the security of the Property, key fobs, vehicle parking, common areas, guests and renters, and short-term rentals. A true and correct copy of the Regulations is attached hereto as **Exhibit 4**.

36. With respect to short-term rentals, Regulation XXI(A) provides:

Pursuant to the its authority granted by Article II of the Associations Bylaws, the Board of Directors has concluded that the offering of rental of any (residential) unit for a term of less than thirty (30) days shall be deemed a non-residential use of the property and prohibited. For purposes of this resolution, “non-residential” shall be defined as the offering, advertising, using or renting of a unit as a lodging establishment for the purpose of collecting rent or remuneration for a period of thirty days or less. This prohibition specifically applies to AirBNBs, VRBOs or any similar service or advertising vehicle that markets rentals for less than thirty (30) days.

37. Notwithstanding, Defendant would show that a “residential” use, as required in the Master Deed and Bylaws for Phase 1 units, does not encompass the short-term rentals, or rentals of thirty days or less, being conducted by Plaintiffs.

38. Defendant is informed that Plaintiffs’ use of the condominium units is rather a commercial/business purpose, which is prohibited in Phase 1 units, as a commercial place of tourism and public accommodations.

39. Plaintiffs are engaged in a commercial activity under both State and local law.

40. Plaintiffs are “innkeepers” of a “lodging establishment” under South Carolina’s Lodging Establishment Act as defined by S.C. Code § 45-2-20:

(1) “Inkeeper” means the owner, operator, manager, or keeper of a lodging establishment;

(2) “Lodging establishment” means a hotel, motel, villa, condominium, inn, tourist court tourist camp, campground, bed and breakfast, residence, or any place in which rooms, lodging, or sleeping accommodations are furnished to transients for a consideration...

41. South Carolina’s Lodging Establishment Act further provides at S.C. Code § 45-2-50 as follows:

The innkeeper of a lodging establishment shall keep for at least five years a guest register showing the name, residence, date of arrival, and departure of hotel guests. Every guest shall register, and the registering guest may be required by the innkeeper to produce a valid driver’s license, or other identification satisfactory to the innkeeper, containing a photograph of the guest and setting forth the name and residence of the guest ... The guest register may be kept within the meaning of this section when reproduced on any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which actually reproduces the original record.

42. Columbia, South Carolina Municipal Code Chapter 11, Article II, Sec. 11-32 defines a “business” as follows:

Business means a calling, occupation, profession or activity engaged in with the object of gain, benefit or advantage, either directly or indirectly...

43. Plaintiffs are engaged in the tourism business operating a place of accommodation as defined by Sec. 20-31 of the Columbia, South Carolina Municipal Code Chapter 20, Article II (“Tourism Development Fee Ordinance”) as follows:

Accommodation means any room, excluding meeting and conference rooms, campground paces, recreational vehicle spaces, lodgings, or sleeping accommodations furnishes to transients by any hotel, motel, inn, condominium, bed and breakfast, residence or any other place in which rooms, lodgings or sleeping accommodations are furnished for consideration with in the city. The gross proceeds received from the lease or rental of sleeping accommodations supplied to the same person for a period of 30 continuous days are not considered proceeds from transients.

44. Furthermore, Sec. 20-32 of the Tourism Development Fee Ordinance provides a uniform fee equal to three percent is imposed on the gross proceeds derived from the rental of any accommodations within the city.

45. Columbia, South Carolina Municipal Code Chapter 11, Article X, Section 11-503 also defines a “place of public accommodation” as follows:

Place of public accommodation means any place which serves the public and requires a license or permit issued by the State of South Carolina, its agencies or the City of Columbia to operate, including, but not limited to:

(1) Any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence...

46. Sec. 11-31 of Columbia, South Carolina, Municipal Code Chapter 11, Art. II (“Business License Ordinance”), provides, amongst other things, the following:

Every person engaged or intending to engage in any calling, business, occupation, or profession ... whether or not it is listed in the rate classification index portion of this article, in whole or in part within the limits of the city, is required to pay an annual license fee and obtain a business license as provided in this article.

47. Defendant is informed the City of Columbia in fact requires a business license to rent property through Airbnb and like services.

48. Section 11-49 of the Business License Ordinance also provides business license rate schedules for both boardinghouses/roominghouses and hotels/motels.

49. Section 11-32 of the Business License Ordinance provides further, amongst other things, the following:

Boardinghouse and roominghouse mean any dwelling, other than a hotel or motel, in which more than three persons who are not members of the owner’s or operator’s family are housed or lodged in rooms used or

intended to be used for living and sleeping but not for cooking or eating purposes, for compensation, with or without meals being provided. Any dwelling in which such accommodations are offered in ten or more rooms shall be considered to be a hotel or motel.

50. Defendant is informed that Plaintiffs are in the business of offering accommodations to transient users, and in addition to renting units which are part of the Middleborough Horizontal Property Regime, also rent additional properties in Columbia through Airbnb and/or other similar services.

51. Residents of Middleborough have reported obnoxious and offensive behaviors from customers of Plaintiffs' commercial rental.

52. Defendant asks that this Court inquire into the matter and issue an order declaring the rights and responsibilities of the parties, and specifically declaring that Plaintiffs' short-term rental of the condominium units as a commercial place of public accommodations constitutes a commercial use, and this use violates the governing documents' restriction against the non-residential use of Phase I condominium units.

FOR A SECOND CAUSE OF ACTION
(Injunctive Relief)

53. Defendant incorporates all previous allegations as if repeated herein verbatim.

54. Defendant will suffer irreparable harm if the covenants are not upheld as to the prohibition against the use of the Phase 1 units for anything other than residential use.

55. The short-term leasing of units 2J and 14G constitutes a commercial use rather than a residential use of the property.

56. Plaintiffs' use of the condominium units for commercial purposes is plainly evidenced by their multiple listings throughout Columbia, the City of Columbia's business licensing provisions applicable to the units and provisions applicable to places of public

accommodation, the City of Columbia's requirement for a business license to rent property within city limits through Airbnb and similar services, and South Carolina statutory provisions concerning innkeepers and places of public accommodation.

57. Defendant has no adequate remedy at law and damages would be unsatisfactory in remedying the consistent and patterned violations.

FOR A THIRD CAUSE OF ACTION
(Breach of Covenants)

58. Defendant incorporates all previous allegations as if repeated herein verbatim.

59. Restrictive covenants are considered voluntary contracts between the parties.

60. Pursuant to the Master Deed and Bylaws, Plaintiffs have breached the covenants contained therein by continuously and repeatedly making commercial use of their units.

61. Residents of Middleborough have reported obnoxious and offensive behaviors from customers of Plaintiffs' commercial rental.

62. Plaintiffs' breach has caused Defendant to incur damages including, but not limited to, loss of property value, diminished aesthetics and a lack of harmony in the community.

FOR A FOURTH CAUSE OF ACTION
(Enforcement of Restrictive Covenants)

63. Defendant incorporates all previous allegations as if repeated herein verbatim.

64. Restrictive covenants are considered voluntary contracts between the parties.

65. Pursuant to the Master Deed and Bylaws, Plaintiffs have breached the covenants contained therein by continuously and repeatedly making commercial use of their units.

66. Defendant is entitled to enforcement of the covenants at equity.

67. The balance of equities favors enforcing the covenant.

FOR A FIFTH CAUSE OF ACTION
(Specific Performance)

- 68. Defendant incorporates all previous allegations as if repeated herein verbatim.
- 69. The Master Deed and Bylaws represents a valid agreement between the parties.
- 70. Defendant has performed in all aspects required by the Master Deed and Bylaws.
- 71. Plaintiffs have failed to perform as required by the Master Deed and Bylaws by continuously or repeatedly making commercial use of their units.
- 72. Defendant is able and willing to perform its obligations under the Master Deed and Bylaws.

WHEREFORE, having fully set forth its Answer and Counterclaim, Defendant prays this Honorable Court for judgement as follows:

- a. For a Declaratory Judgment that Plaintiffs are violating the Master Deed Bylaw's restriction that apartments in Phase 1 be used only as residences;
- b. An order enjoining Plaintiffs to cease the short-term leasing of their units which constitutes a commercial, non-residential use of the property;
- c. For an Order enforcing the restrictive covenants;
- d. For an Order requiring Plaintiffs to specifically perform under the provisions of the governing documents;
- e. Actual and consequential damages and the taxable costs of this action;
- f. For such other and further relief as this Honorable Court may deem just and proper.

[Signature on following page]

Respectfully Submitted,

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)



1776 1793 PAGE 92

MASTER DEED

MIDDLEBOROUGH

HORIZONTAL PROPERTY REGIME
(An Expandable Regime)

THIS MASTER DEED made by Middleborough, A Limited Partnership ("Grantor"), pursuant to the Horizontal Property Act of South Carolina (the "Act") for the purpose of creating a horizontal property regime and establishing certain easements, covenants and restrictions to and with the land,

WITNESSETH:

ARTICLE I

THE PROPERTY

A. Property. As used herein, the term "Property" means and includes the land hereinafter identified and all improvements and structures now existing or hereafter placed thereon by Grantor and all easements, rights and appurtenances belonging thereto, excluding only those portions of the land and improvements reserved to Grantor for additional Phases II, III and IV.

B. Land. The land ("Land") which is subject to this Master Deed is that certain tract or parcel described in Exhibit "A" attached hereto and consisting of 5.28 acres, excluding only those portions of the Land and Property reserved to Grantor for additional Phases II, III and IV. The Land is owned by Grantor in fee simple and is more particularly described and delineated on the plat recorded in Plat Book X at page 2075 in the office of the R. M. C. for Richland County, South Carolina.

C. Phase I Apartments. Grantor has constructed as part of the Property an eighteen (18) story building covering a total ground area (at grade) of 14,870 square feet and containing a total of 192 residential apartments ("Apartments") and a three (3) deck parking garage covering a total ground area (at grade) of 22,685 square feet, all as shown on the plans and specifications titled "Middleborough High Rise Apartments Federal Housing Administration Project No. 054-00084 SEC. 207 prepared by Love & Cobb Architects and Reed, Fleming & Associates, Inc., Engineers, Columbia, S.C. dated April 3, 1972, as revised, which plans and specifications are incorporated herein by reference. The Apartments consist of 6 types as follows:

Type A. A one-bedroom apartment containing 800 square feet of interior area;

Type B. A two-bedroom apartment containing 1010 square feet of interior area;

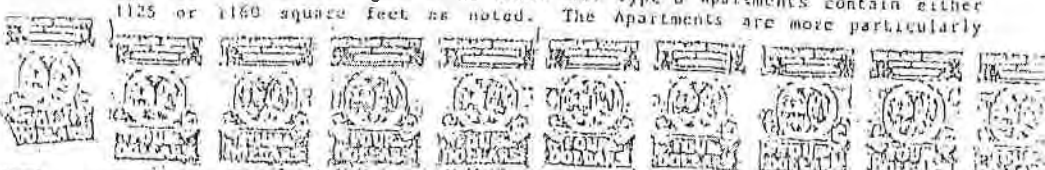
Type C. A two-bedroom apartment containing 1050 square feet of interior area;

Type D. A two-bedroom apartment containing 1100 square feet of interior area;

Type E. A two-bedroom apartment containing 1125-1160 square feet of interior area; and

Type F. A three-bedroom apartment containing 1375 square feet of interior area.

Certain types of Apartments exist in two configurations, each of which is the approximate mirror image of the other and Type E apartments contain either 1125 or 1160 square feet as noted. The Apartments are more particularly



described as to number, location, type and configuration on the Plot Plan, the floor plans (the "Floor Plans") of the Apartments filed for record herewith as Exhibits "B-1" through "B-19" attached hereto. Each Apartment encompasses and includes all that portion of the building designated on the Floor Plans as an Apartment and consisting of all living and storage space bounded by the upper surface of the floor slab, by the unexposed surfaces of the drywall or plastering forming interior walls and ceilings, and by the exterior surfaces of windows and window frames and of exterior doors and the door frames; and all flooring, floor covering, tile, plaster, wall board, paint, wall covering, doors, door frames, windows, window frames, cabinets, fixtures, appliances and other building materials within the space so bounded. Each Apartment also includes the heating, air conditioning and ventilating equipment and the ducting, electrical wiring and water and sewer pipes serving such Apartment exclusively, regardless of where situated. The balcony or balconies adjacent to and immediately accessible from an Apartment and screens covering the doors or windows of an Apartment are also part of the Apartment.

D. Common Elements. All portions of the Property not encompassed and included within the various Apartments are part of the common elements (the "Common Elements") of the Property. The Common Elements consist of General Common Elements as hereinafter described.

E. General Common Elements. The General Common Elements include the following:

1. The Land;
2. The foundation, main walls, roof (as now existing or as replaced upon completion and merger of Phase III), halls, reception area, fire stairs, and entrance and exit or communication ways of the building;
3. The compartments or installations of central services such as power, light, refrigeration, reservoirs, water tanks and pumps and the like;
4. The elevators and, in general, all devices or installations existing for common use; and
5. All other elements of the Property rationally of common use or necessary to its existence, upkeep and safety.

F. Values. The value of the Property is \$12,075,200.00, and the value of each individual Apartment is as shown on Exhibit C attached hereto and hereby made a part hereof. The values shown on Exhibit C are fixed for the sole purpose of complying with the Horizontal Property Act and irrespective of the actual values, and shall not prevent Grantor or each Co-owner from fixing a different circumstantial value to his Apartment in all types of acts and contracts.

G. Ownership of Common Elements. Ownership of the Common Elements is apportioned among and appurtenant to the individual Apartments according to the percentages set forth on Exhibit C. The percentage of the undivided interest in the Common Elements shall not be separated from the Apartment to which it appertains and shall be deemed to be conveyed or encumbered with the Apartment even though such interest is not expressly mentioned or described in the deed or other instrument of conveyance. Said percentage also shall not be altered without the acquiescence of all the Co-owners except as provided in Article V, upon the addition of Phases II, III and/or IV or any of them.

H. Name. The name by which the horizontal property regime shall be known is "Middleborough Horizontal Property Regime" (hereinafter sometimes called "Regime").

ARTICLE II

THE COUNCIL

A. Members. Every Co-owner, as hereinafter defined, shall be a member of and constitute the council of Co-owners (the "Council"), an unincorporated association which shall be managed by a board of administration (the "Board of Directors") elected by and from the Co-owners and by a professional management company (the "Manager") if the Board of Directors or the Council so elect.

B. Co-owner. As used herein, the term "Co-owner" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns an Apartment.

C. Bylaws. The Council and the administration of the Property shall be governed by the bylaws (the "Bylaws") annexed hereto as Exhibit D. The Bylaws may be modified or amended only in the manner set forth in Article IX hereof.

D. Voting. On all matters relating to the Council or to the Property upon which a vote of the Co-owners is conducted, the Co-owners shall vote in proportion to their respective percentage interests in the Common Elements so that there shall be appurtenant to each type of Apartment one vote (or percentage thereof) equal to the percentage ownership attributable to such Apartment. ~~The total number of votes appurtenant to all Apartments is 100. The affirmative vote of a majority of the Co-owners, as hereinafter defined, shall be required to adopt decisions. All votes attributable to a single Apartment must be cast together and may not be split.~~

E. Majority of the Co-owners. Whenever used in this Master Deed or the Bylaws, the term "Majority of the Co-owners" means Co-owners entitled to cast a total of more than 50 votes.

F. Interim Rights of Grantor. Notwithstanding anything to the contrary in this Master Deed or the Bylaws, until 120 days after Grantor or its successor in interest owns fewer than twenty-five (25 %) percent of the Apartments of Phase I or until the passage of three (3) years from the date of recording this Master Deed, whichever first occurs, there shall be not more than three (3) directors and Grantor or its successors shall be entitled to designate two (2) of such directors, and any successor to such director, all as is provided in the Bylaws.

ARTICLE III

COMMON EXPENSES

A. Liability of Co-owners. The Co-owners of the Apartments are bound to contribute in proportion to their respective interests in the Common Elements toward the following expenses ("Common Expenses"):

1. Expenses of administration and of maintenance and repair of the General Common Elements and, in proper cases, of the Limited Common Elements; and
2. Any other expense lawfully agreed upon by the Council.

The liability of each Co-owner for the Common Expenses shall be limited to the amounts for which he is assessed from time to time in accordance with the Horizontal Property Act, this Master Deed and the Bylaws. No Co-owner may exempt himself from contributing toward the Common Expenses by waiver of the use or enjoyment of the Common Elements or by abandonment of his Apartment. Monthly assessments shall commence and be due and payable upon the recordation of this Master Deed.

B. Liability of Purchaser. The purchaser of an Apartment (other than a purchaser at a foreclosure sale as described below in paragraph E) shall be jointly and severally liable with the seller pursuant to paragraph A above up to the time of the conveyance, without prejudice to the purchaser's right to recover from the seller the amounts paid by the purchaser as such joint debtor. The Council shall provide for the issuance and shall issue to any purchaser, upon his request, a statement of such amounts due by the seller of any Apartment, and the purchaser's liability under this paragraph shall be limited to the amount as set forth in the statement.

C. Sale of Apartment. Upon the sale or conveyance of an Apartment, all unpaid assessments against a Co-owner for his pro rata share of the Common Expenses shall first be paid out of the sales price or by the acquirer in preference over any other assessments or charges of whatever nature except the following:

1. Assessments, liens and charges for taxes past due and unpaid on the Apartment; and

1 D 593 PAGE 94

2. Payments due under mortgage instruments or encumbrances duly recorded prior to the time the assessments for Common Expenses became payable.

D. Lien on Apartment. All sums assessed by the Manager or the Board of Directors for the share of the Common Expenses chargeable to any Apartment shall constitute a lien on such Apartment prior and superior to all other liens except only (i) tax liens on the Apartment in favor of any assessing unit, and (ii) mortgage and other lien encumbering the Apartment, duly recorded prior to the time the assessment for such Common Expenses became payable. Such lien may be foreclosed by suit by the Manager or the Board of Directors, acting on behalf of the Council, in like manner as a mortgage of real property. In any such foreclosure the Co-owner of the Apartment shall be required to pay a reasonable rental for the Apartment after the commencement of the foreclosure action, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same. The Manager or the Board of Directors, acting on behalf of the Council, shall have power to bid in the Apartment at any foreclosure sale and to acquire, hold, lease, mortgage, encumber and convey the same. Suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or waiving the lien securing the same.

E. Foreclosure Purchaser. Where the mortgagee of any mortgage of record or other purchaser of an Apartment obtains title to the Apartment as a result of foreclosure of such mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of the Common Expenses or assessments by the Co-owners chargeable to such Apartment accruing after the date of recording such mortgage but prior to the acquisition of title to such Apartment by such acquirer. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all of the Co-owners, including such acquirer, his successors and assigns.

F. Records. The Manager of the Board of Directors shall keep, or cause to be kept, a book with a detailed account, in chronological order, of the receipts and expenditures affecting the Property and its administration and specifying the maintenance and repair expenses of the Common Elements and any other expenses incurred. Both the book and the vouchers accrediting the entries made thereupon shall be available for examination by all the Co-owners or mortgage holder or insurer at convenient hours on working days that shall be set and announced for general knowledge.

ARTICLE IV

EASEMENTS, COVENANTS AND RESTRICTIONS

A. Use of Property. Each Co-owner shall be entitled to the exclusive ownership and possession of his Apartment and may use the Common Elements in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of other Co-owners.

D. Utility Easements. There shall be appurtenant to each Apartment a non-exclusive easement for use of all pipes, wires, cables, conduits, utility lines, flues and ducts serving such Apartment and situated in any other Apartment. Each Apartment shall be subject to an easement in favor of other Apartments for use of all pipes, wires, cables, conduits, utility lines, flues and ducts situated in such Apartments and serving such other Apartments.

G. Encroachments. If any portion of the Common Elements now encroaches upon any Apartment, or if any Apartment now encroaches upon any other Apartment or upon any portion of the Common Elements, or if any such encroachment shall occur hereafter as a result of (i) settling of an Apartment or Apartments; (ii) repair, alteration or reconstruction of the Common Elements made by or with the consent of the Council; (iii) repair or reconstruction of an Apartment or Apartments following damage by fire or other casualty; or (iv) 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 Horizontal Property Act.

10 593 PAGE 95

D 593 PAGE 96

D. Right of Access. The Council shall have the irrevocable right, to be exercised by the Manager or the Board of Directors, to have access to each Apartment from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Apartment.

E. Maintenance of Common Elements. The necessary work of maintenance, repair and replacement of the Common Elements and the making of any additions or improvements thereto shall be carried out only as provided in the Horizontal Property Act, this Master Deed and the Bylaws.

F. Prohibited Work. No Co-owner shall do any work which would jeopardize the soundness or safety of the Property, reduce the value thereof or impair any easement or hereditament without in every such case unanimous consent of all other Co-owners affected being first obtained.

G. Partition. The Common Elements shall remain undivided and shall not be the object of an action for partition or division of the co-ownership. Any covenant to the contrary shall be void.

ARTICLE V

MERGER OF ADDITIONAL PHASES

A. Additional Property. This is an expandable project. Portions of the grounds, the first floor, the basement and the roof of the building containing the Apartments hereby subjected to the Act, which are identified in Exhibit A as "Reserved to Grantor For Future Use" are excluded from the Middleborough Horizontal Property Regime by Grantor. In the future Grantor may wish to expand this Regime by adding such additional property (modified or constructed as additional apartments, commercial space or penthouses) in one or more Phases as hereinafter described. The maximum number of additional units which may be annexed to the Regime established hereby shall not exceed thirty-six (36) apartment units or commercial units in the aggregate on the first floor and basement (Phase II); twelve (12) penthouse apartment units constructed on the roof of the building (Phase III); and, additional construction of a building or buildings containing not more than thirty-six (36) units on the reserved forty-two one hundredths (.42) acre located at the southwestern corner of the Land (Phase IV). The aggregate total maximum square footage for Phases II, III and IV, which Grantor may add to this Regime shall not exceed 85,771 square feet and the aggregate total value of the additional property (determined solely for purposes of complying with the Act) shall not exceed \$5,282,900. Any additional apartment or commercial units shall be constructed of equal or superior quality to those subjected to this Regime in this Phase I and shall be substantially completed prior to annexation to this Phase I.

B. Amendments to Master Deed. In the event Grantor, in its sole discretion, elects to proceed to enlarge this Regime by adding Phase II, Phase III or Phase IV, or any of them, in any order, or parts of any of them, in any order, Grantor shall execute an amendment or amendments to this Master Deed which shall be filed for record in the R.M.C. Office for Richland County, South Carolina not later than seven (7) years from the date of recording this Master Deed. Any such amendment or amendments shall fully describe the property being added to this Regime and submit such property to all of the provisions of this Master Deed and exhibits attached hereto, as amended. Such amendment or amendments expanding this Regime, as aforesaid, may be accomplished unilaterally by Grantor without the approval or consent of any Co-owner, or mortgagee of any Co-owner, of the Regime as constituted at the time of such amendment. Upon exercise of any such option to expand, as aforesaid, the provisions of this Master Deed shall then be understood and construed as embracing Phase I property and such property as may be described in such amendment, together with all improvements constructed thereon.

C. Reversion of Additional Property to Regime. Should the expansion options not be exercised within the time specified, they shall in all respects expire and be of no further force and effect and/or should Grantor earlier declare his intention to release such reserved property to this Regime by amendment recorded as aforesaid, then the property so reserved to Grantor shall become and be deemed thereafter to be part of the Common Elements

L 593 PAGE 97

D. Rights and Obligations of New Co-owners. Immediately upon recording the amendment or amendments adding an additional Phase or Phases, or any part thereof, Co-owners of Apartments or commercial space within such property shall assume all rights and obligations which Co-owners of Phase I may have hereunder and shall bear their proportionate share of the common expenses payable by existing Co-owners, and the percentage ownership of existing Co-owners in common areas shall change in direct proportion to the percentage that the value of the additional property (determined solely for purposes of complying with the Act to be \$61.59 per square foot of interior area) bears to the sum of the value of the property hereby subjected to condominium ownership and the value of the additional property.

E. Elevator Service to Phase III. As part of the additional phase encompassing the proposed penthouse apartment units (Phase III), Grantor reserves the right to add to the interior or exterior of the building elevator service to the penthouse apartment units and/or to extend the existing elevator service to the penthouse apartment units.

F. Replacement of Tennis Court in Phase IV. As part of the horizontal property regime encompassing the proposed new construction of Apartments in Phase IV, Grantor would necessarily use the property where the existing tennis court is located. Prior to beginning construction on such property Grantor shall build or cause to be built, at its sole expense, a tennis court of similar quality on the existing garage or if Grantor elects not to build, or is unable to build on the existing garage, on another portion of the Common Elements designated by the Directors of the Council of Co-owners.

G. Reservation of Construction and Maintenance Easement. As part of the reservation of the option in Grantor to add additional property to this Regime, Grantor reserves unto itself, and its successors and assigns, easements for ingress and egress over, under and across all Common Elements and such other reasonable right of access to and use of the Common Elements subjected to this Regime as may be necessary for the construction, maintenance and marketing of the additional Apartment units or commercial units.

H. Taxes and Assessments Prior to Merger. Prior to filing any amendment to this Master Deed adding additional property to this Regime, Grantor shall be responsible for all taxes and other assessments relating to the property reserved to Grantor.

ARTICLE VI

LIENS

A. Attachment. No lien arising subsequent to the recording of this Master Deed, and while the Property remains subject to the Horizontal Property Act, shall be effective against the Property. During such period, liens or encumbrances shall arise or be created only against each Apartment and the percentage of undivided interest in the Common Elements appurtenant to such Apartment 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 furnished with the consent or at the request of a Co-owner or his agent or his contractor or subcontractor shall be the basis for the filing of a mechanic's or materialman's lien against the Apartment or any other property of any other Co-owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by the Co-owner of any Apartment in the case of emergency repairs thereto. Labor performed or materials furnished for the Common Elements, if duly authorized by the Council, the Manager or the Board of Directors in accordance with the Horizontal Property Act, this Master Deed or the Bylaws, shall be deemed to be performed or furnished with the express consent of each Co-owner, and shall be the basis for the filing of a mechanic's or materialman's lien against each of the Apartments and shall be subject to the provisions of paragraph B below.

B. Discharge. In the event a lien against two or more Apartments becomes effective, the Co-owners of the separate Apartments may remove their Apartments and the percentage of undivided interest in the Common Elements appurtenant to such Apartments from the lien by any payment of the fractional or proportional amounts attributable to each of the Apartments affected. Such

individual payment shall be computed by reference to the percentages appearing in this Master Deed. Subsequent to any such payment, discharge or other satisfaction, the Apartment 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 rights against any Apartment and the percentage of undivided interest in the Common Elements appurtenant thereto not so paid, satisfied or discharged.

C. Taxes. Taxes, assessments and other charges of this State, or of any political subdivision, or of any special improvement district, or of any other taxing or assessing authority shall be assessed against and collected on each individual Apartment, each of which shall be carried on the tax books as a separate and distinct entity for that purpose, and not on the buildings or Property as a whole. No forfeiture or sale of the buildings or Property as a whole for delinquent taxes, assessments or charges shall ever divest or in anywise affect the title to an individual Apartment so long as taxes, assessments and charges on the individual Apartment are currently paid.

ARTICLE VII

INSURANCE

The Council shall insure the Property against risks, without prejudice to the right of each Co-owner to insure his Apartment on his own account, for his own benefit.

ARTICLE VIII

RECONSTRUCTION

A. When Required. In case of fire or any other disaster, the indemnity from any insurance obtained by the Council shall, except as hereinafter provided, be applied to reconstruct the Property. Reconstruction shall not be compulsory where it comprises the whole or more than two-thirds (2/3) of the Property. In such case, and unless otherwise unanimously agreed upon by the Co-owners, the indemnity shall be delivered pro rata to the Co-owners entitled to it in accordance with the provision made in the Bylaws or in accordance with the decision of three-fourths (3/4) of the Co-owners if there is no Bylaws provision. Should it be proper to proceed with the reconstruction, the provision for such eventuality made in the Bylaws shall be observed, or, in lieu thereof, the decision of the Council shall prevail.

B. Costs. Where the Property is not insured or where the insurance indemnity is insufficient to cover the cost of reconstruction, the rebuilding costs shall be paid by all the Co-owners directly affected by the damage, in proportion to the value of their respective Apartments, or as may be provided in the Bylaws; and if any one or more of those composing the minority shall refuse to make such payment, the majority may proceed with the reconstruction at the expense of all the Co-owners benefited thereby, upon proper resolution setting forth the circumstances in the case and the cost of the work, with the intervention of the Council. The provisions of this paragraph may be changed by the unanimous resolution of the parties concerned, adopted subsequent to the date on which the fire or other disaster occurred.

ARTICLE IX

AMENDMENTS

A. Master Deed. Except as provided in Article V which provides for amendments by Grantor to add additional Phases, this Master Deed may be amended only by written agreement of all the Co-owners.

B. Bylaws. The Bylaws may be amended from time to time by the affirmative vote of the Co-owners entitled to cast a total of no fewer than two-thirds of the votes.

C. Recording. No amendment to this Master Deed or the Bylaws shall be effective unless and until recorded as required by the Horizontal Property Act.

ARTICLE X

MISCELLANEOUS

D 593 PAGE 99

A. Application. All Co-owners, tenants of Co-owners, employees of Co-owners and tenants, or any other persons that may in any manner use the Property or any part thereof shall be subject to the Horizontal Property Act and to this Master Deed and the Bylaws.

B. Compliance. Each Co-owner shall comply strictly with the Bylaws and with the Administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions, and restrictions set forth in this Master Deed or in the deed to the Apartment of such Co-owner. Failure to comply with any of the same shall be ground for a civil action to recover sums due for damages or injunctive relief, or both, maintainable by the Manager or the Board of Directors on behalf of the Council or, in a proper case, by an aggrieved Co-owner.

C. Waiver. No provision 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.

D. Conflicts. This Master Deed is executed to comply with the requirements of the Horizontal Property Act, and in the event that any of the provisions hereof conflict with the provisions of the Horizontal Property Act, the Horizontal Property Act shall control.

E. 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.

F. 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 provision hereof.

G. 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.

H. Termination. All the Co-owners or the sole Co-owner of the Property may waive the horizontal property regime and regroup or merge the records of the Apartments with the Common Elements, provided that the Apartments are unencumbered or, if encumbered, that the creditors on whose behalf the encumbrances are recorded agree to accept as security the undivided portions of the Property owned by the debtors.

IN WITNESS WHEREOF, Grantor has executed this Master Deed this 14th day of OCTOBER, 1981.

Signed, sealed and delivered
in the presence of:

Lillian Chapman
Witness

Harry A. Moore
Witness

Middleborough, A Limited Partnership

By: Park Tower, Inc., its General Partner

By: *Paul E. Pinson*
its VICE-PRESIDENT
and *William J. Cherry*
its SECRETARY

D 593 PAGE 99

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PROBATE

D 593 PAGE 100

Before me, the undersigned notary public, appeared HENRY L. MOISE, who being duly sworn, said that he saw Middleborough, a Limited Partnership by Park Tower, Inc., its General Partner by PAUL E. PINSON its VICE-PRESIDENT and WILLIAM J. CHERRY its SECRETARY attest and seal the same, and said partnership, by said General Partner, deliver said Master Deed as its act and deed, and that HE he with WILLIAM C. BOYD, III witnessed the same.

SWORN to before me this the 17th day of OCTOBER, 1981

William C. Boyd, III
Notary Public for South Carolina

My Commission Expires 8/16/89

Henry L. Moise

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D 593 PAGE 100

STATE OF SOUTH CAROLINA)

AMENDMENT TO MASTER DEED OF

COUNTY OF RICHLAND)

MIDDLEBOROUGH HORIZONTAL
PROPERTY REGIME

THIS AMENDMENT TO MASTER DEED, executed this 21st day of December, 1984,
by Middleborough, A Limited Partnership ("Grantor").

WITNESSETH:

WHEREAS, Grantor established that certain horizontal property regime located in Richland County, South Carolina, known as Middleborough Horizontal Property Regime (the "Regime") by executing and recording that certain master deed (the "Master Deed") dated October 14, 1981, and recorded in the Office of the R.M.C. for Richland County, South Carolina, in Deed Book D593 at Page 92; and

WHEREAS, Article V of the Master Deed provides for merger, at the option of Grantor, of additional phases into the Regime, including, but not limited to, adding to the Regime the ground floor of the building in which the Regime is located; and

WHEREAS, Grantor desires to add the ground floor of the aforesaid building to the Regime as residential and commercial Apartments pursuant to the terms of the Master Deed and as further provided hereinbelow.

NOW, THEREFORE, pursuant to its rights to expand the Regime by adding additional phases thereto in accordance with and pursuant to the terms of the Master Deed, Grantor does hereby amend the Master Deed as follows:

1. Addition to Regime. Grantor hereby adds to the Regime the real property consisting of the ground floor of the Regime building, with the exception of such portions of the ground floor as are already common elements of the Regime. The portion of the ground floor added to the Regime hereby is more specifically described and shown as Apartments G-1, G-2, G-3, G-4, G-5 and G-6 on the floor plan (the "Floor Plan") of the ground floor attached hereto as Exhibit A and hereby made a part hereof (the portion of the ground floor added to the Regime shall be referred to hereinafter as the "Phase II-A Apartments"). The Phase II-A Apartments are hereby submitted to all of the provisions of the Master Deed and the exhibits attached thereto, as such may have been amended or may be amended from time to time. Grantor, for itself and its successors and assigns, hereby assumes as fee simple owner of the Phase II-A Apartments all rights and obligations of a Co-Owner under the Regime.

2. Use of Phase II-A Apartments. All Phase II-A Apartments may be used for residential purposes, including, but not limited to, rental residential space, or any commercial purpose allowed by applicable law, including, but not limited to, use of such Apartments as commercial retail space or commercial office space.

3. Number and Description of Phase II-A Apartments; Percentage Interest in Common Elements.

(a) The Phase II-A Apartments shall consist of six (6) Apartments designated as Apartment Unit Nos. G-1, G-2, G-3, G-4, G-5 and G-6 of the Regime. The Phase II-A Apartments are more particularly described as to number, location, type and configuration on the Floor Plan. Each Phase II-A Apartment encompasses and includes all that portion of the building designated on the Floor Plan as an Apartment and consisting of all living and storage space bounded by the upper surface of the floor slab, by the unexposed surfaces of the drywall or plastering forming interior walls and ceilings, and by the exterior surfaces of windows and window frames and of exterior doors and the door frames; and all flooring, floor covering, tile, plaster, wall board, paint, wall covering, doors, door frames, windows, window frames, cabinets, fixtures, appliances and other building materials within the space so bounded. Each Phase II-A Apartment also includes the heating, air conditioning and ventilating equipment and the ducting, electrical wiring and water and sewer pipes serving such Apartment exclusively, regardless of where situated. The

FILED
REGISTER OF MERGE CONTINGENCIES
CLASS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 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, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 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, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

exterior court adjacent to a Phase II-A Apartment and screens covering the doors or windows of a Phase II-A Apartment are also part of the Phase II-A Apartment.

(b) The value of the Regime property including the Phase II-A Apartments is \$12,460,137.50, and the value of the Phase II-A Apartments and all other Apartments is as shown on Exhibit B attached hereto and hereby made a part hereof. The values shown on Exhibit B are fixed for the sole purpose of complying with the South Carolina Horizontal Property Act and irrespective of the actual values, and shall not prevent Grantor or each Co-Owner from fixing a different circumstantial value to his Apartment in all types of acts and contracts.

(c) Ownership of the Common Elements with the addition of the Phase II-A Apartments is apportioned to the individual Apartments according to the percentages set forth on Exhibit B.

3. Apartment Entrances. Each Phase II-A Apartment fronts on the ground level of the southeastern side of the Regime building. Some Phase II-A Apartments have existing doors to the outside of the Regime building and some Phase II-A Apartments have only exterior glass walls. The Owner of each Phase II-A Apartment shall have the option at any time, at his own expense, to cut one (1) or more doors to the outside on the southeastern side of the Regime building for each Phase II-A Apartment, provided that such doors shall be designed in keeping with the existing design and appearance of the exterior of the Regime building.

4. Additional Phases. The Master Deed provides for the addition to the Regime of Phase II, which would include both the ground floor, herein designated the Phase II-A Apartments, and the first floor of the Regime building. Pursuant to Article V of the Master Deed, which provides in part that Grantor may elect to add Phase II, Phase III or Phase IV, or parts of any of them, Grantor has elected to add only the portion of Phase II described hereinabove as the Phase II-A Apartments to the Regime at this time. Grantor reserves its rights under the Master Deed to add the remainder of Phase II, as well as Phase III and Phase IV, or any part of any of them, to the Regime in accordance with the terms of the Master Deed, and no provision hereof shall be deemed a modification or waiver of such rights.

5. Miscellaneous. Except as otherwise provided herein, the terms used herein have the same meaning as provided in the Master Deed. Except as modified hereby, the terms and provisions of the Master Deed are incorporated herein by reference.

IN WITNESS WHEREOF, Grantor has executed this Amendment to Master Deed on the date first above written.

Signed, Sealed and Delivered
in the Presence of:

Middleborough, A Limited Partnership

By: Park Tower, Inc., Its General Partner

By: William H. Thomas
Its Vice-President
(CORPORATE SEAL)

John B. Smith
Debra J. Williams

LD 722-532

ED 722 PAGE 553

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PROBATE

Before me, the undersigned notary public, personally appeared Benton D. Williams, who, being sworn, deposed and said that he saw Middleborough, A Limited Partnership, by Park Tower, Inc., Its General Partner, by William H. Thoms its Vice President, sign, seal and deliver the foregoing Amendment to Master Deed and that he, together with John B. McArthur, witnessed the execution thereof.

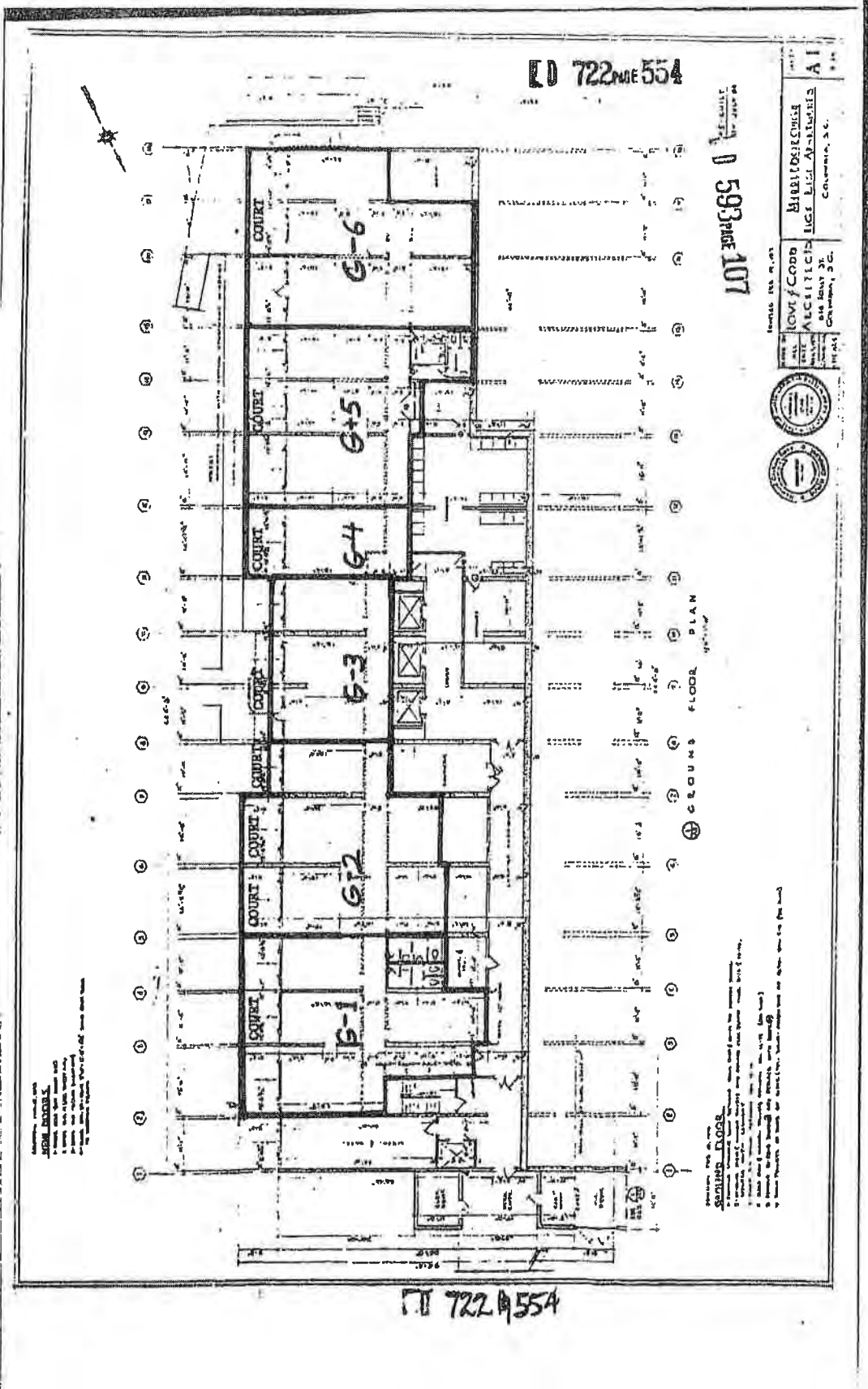
SWORN TO and subscribed
before me this 24 day
of December, 1984.



John B. McArthur (SEAL)
Notary Public for South Carolina
My commission expires 2/1/92

ED 722 PAGE 553

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ED 722 PAGE 555

Apartment #	Assigned Value	Percentage Interest In Common Elements Expressed As A Percentage	Apartment #	Assigned Value	Percentage Interest In Common Elements Expressed As A Percentage
2A	\$55,800	.44783	6A	\$57,800	.46388
2B	60,300	.48394	6B	62,300	.49999
2C	58,925	.47291	6C	60,925	.48896
2D	58,925	.47291	6D	60,925	.48896
2E	60,300	.48394	6E	62,300	.49999
2F	42,500	.34109	6F	44,500	.35714
2G	42,500	.34109	6G	44,500	.35714
2H	62,275	.49979	6H	64,275	.51585
2I	58,400	.46869	6I	60,400	.48475
2J	58,400	.46869	6J	60,400	.48475
2K	62,275	.49979	6K	64,275	.51585
2L	67,500	.54173	6L	69,500	.55778
3A	56,300	.45184	7A	58,300	.46789
3B	60,800	.48796	7B	62,800	.50401
3C	59,425	.47692	7C	61,425	.50100
3D	59,425	.47692	7D	61,425	.50100
3E	60,800	.48796	7E	62,800	.50401
3F	43,000	.34510	7F	45,000	.36115
3G	43,000	.34510	7G	45,000	.36115
3H	62,775	.50301	7H	64,775	.51986
3I	58,900	.47271	7I	60,900	.48876
3J	58,900	.47271	7J	60,900	.48876
3K	62,775	.50301	7K	64,775	.51986
3L	68,000	.54754	7L	70,000	.56179
4A	56,800	.45585	8A	58,800	.47190
4B	61,300	.49197	8B	63,300	.50802
4C	59,925	.48093	8C	61,925	.49698
4D	59,925	.48093	8D	61,925	.49698
4E	61,300	.49197	8E	63,300	.50802
4F	43,500	.34911	8F	45,500	.36516
4G	43,500	.34911	8G	45,500	.36516
4H	63,275	.50782	8H	65,275	.52387
4I	59,400	.47672	8I	61,400	.49277
4J	59,400	.47672	8J	61,400	.49277
4K	63,275	.50782	8K	65,275	.52387
4L	68,500	.54975	8L	70,500	.56580
5A	57,300	.45987	9A	59,300	.47592
5B	61,800	.49598	9B	63,800	.51203
5C	60,425	.48495	9C	62,425	.50100
5D	60,425	.48495	9D	62,425	.50100
5E	61,800	.49598	9E	63,800	.51203
5F	44,000	.35313	9F	46,000	.36918
5G	44,000	.35313	9G	46,000	.36918
5H	63,775	.51183	9H	65,775	.52788
5I	59,900	.48073	9I	61,900	.49678
5J	59,900	.48073	9J	61,900	.49678
5K	63,775	.51183	9K	65,775	.52788
5L	69,000	.55377	9L	71,000	.56982

ED 722 PAGE 555

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Apartment #	Assigned Value	Common Elements Expressed As A Percentage	Apartment #	Assigned Value	Common Elements Expressed As A Percentage
10A	\$60,100	.48234	15A	\$65,700	.52728
10B	64,600	.51845	15B	70,200	.56340
10C	63,225	.50742	15C	68,825	.55236
10D	63,225	.50742	15D	68,825	.55236
10E	64,600	.51845	15E	70,200	.56340
10F	46,800	.37560	15F	52,400	.42054
10G	46,800	.37560	15G	52,400	.42054
10H	66,575	.53430	15H	72,175	.57925
10I	62,700	.50320	15I	68,300	.54815
10J	62,700	.50320	15J	68,300	.54815
10K	66,575	.53430	15K	72,175	.57925
10L	71,800	.57624	15L	77,400	.62118
11A	60,900	.48876	16A	67,700	.54333
11B	65,400	.52487	16B	72,200	.57945
11C	64,025	.51384	16C	70,825	.56841
11D	64,025	.51384	16D	70,825	.56841
11E	65,400	.52487	16E	72,200	.57945
11F	47,600	.38202	16F	54,400	.43659
11G	47,600	.38202	16G	54,400	.43659
11H	67,375	.54072	16H	74,175	.59530
11I	63,500	.50963	16I	70,300	.56420
11J	63,500	.50963	16J	70,300	.56420
11K	67,375	.54072	16K	74,175	.59530
11L	72,600	.58266	16L	79,400	.63723
12A	61,700	.49518	17A	69,700	.55938
12B	66,200	.53129	17B	74,200	.59550
12C	64,825	.52026	17C	72,825	.58446
12D	64,825	.52026	17D	72,825	.58446
12E	66,200	.53129	17E	74,200	.59550
12F	48,400	.38844	17F	56,400	.45264
12G	48,400	.38844	17G	56,400	.45264
12H	68,175	.54714	17H	76,175	.61135
12I	64,300	.51605	17I	72,300	.58025
12J	64,300	.51605	17J	72,300	.58025
12K	68,175	.54714	17K	76,175	.61135
12L	73,400	.58908	17L	81,400	.65328
14A	63,700	.51123	18A	71,700	.57544
14B	68,200	.54735	18B	76,200	.61155
14C	66,825	.53631	18C	74,825	.60052
14D	66,825	.53631	18D	74,825	.60052
14E	68,200	.54735	18E	76,200	.61155
14F	50,400	.40449	18F	58,400	.46870
14G	50,400	.40449	18G	58,400	.46870
14H	70,175	.56320	18H	78,175	.62740
14I	66,300	.53210	18I	74,300	.59630
14J	66,300	.53210	18J	74,300	.59630
14K	70,175	.56320	18K	78,175	.62740
14L	75,400	.60513	18L	83,400	.66933
<u>Ground Floor</u>					
G1	80,381.64	.70931			
G2	67,441.05	.54125			
G3	47,732.25	.38308			
G4	23,404.20	.18783			
G5	74,523.90	.59810			
G6	83,454.45	.66977			

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BYLAWS
OF
MIDDLEBOROUGH;
HORIZONTAL PROPERTY REGIME

THESE BYLAWS of Middleborough Horizontal Property Regime are promulgated pursuant to the Horizontal Property Act of South Carolina (the "Horizontal Property Act") for the purpose of governing Middleborough Council of Co-owners (the "Council") and the administration of Middleborough (the "Property"), which has been submitted to a horizontal property regime. The terms used herein are defined in the Master Deed by which the Property was so submitted, and these Bylaws incorporate and are subject to the provisions of said Master Deed.

ARTICLE I

CO-OWNERS

A. Membership. Every Co-owner shall be a member of the Council. A person who holds title to an Apartment merely as security for payment of a debt shall not be entitled to exercise the rights of a Co-owner unless such person holds a proxy conferring such rights.

B. Voting. Votes of the Co-owners shall be cast only at meetings of the Co-owners convened in accordance with these Bylaws. The affirmative vote of a Majority of the Co-owners, as hereinafter defined, shall be required to adopt amendments.

C. Majority of the Co-owners. As used in these Bylaws, the term "Majority of the Co-owners" means Co-owners entitled to cast a total of more than fifty (50) votes.

D. Quorum. A Majority of the Co-owners present in person or by proxy shall constitute a quorum for the transaction of business at meetings of the Co-owners.

E. Consents. Any action which may be taken by a vote of the Co-owners may also be taken by written consent to such action signed by all Co-owners.

F. Annual Meetings. An annual meeting of the Co-owners shall be held on the second Tuesday in March of each year or at such other time during each year as may be determined by a Majority of the Co-owners. Any business which is appropriate for action of the Co-owners may be transacted at an annual meeting.

G. Special Meetings. Special meetings of the Co-owners may be called at any time by the President of the Council or by a majority of the Board of Directors and shall be called upon the written request of a Majority of the Co-owners. Only such business as is stated in the notice of meeting shall be transacted at a special meeting unless all Co-owners waive notice of any additional business.

H. Notice of Meetings. Written notice of every annual or special meeting of the Co-owners stating the time, date and place of the meeting and, in the case of a special meeting, the business proposed to be transacted shall be given to every Co-owner not fewer than ten (10) nor more than thirty (30) days in advance of the meeting. Failure to give proper notice of a meeting of the Co-owners shall not invalidate any action taken at such meeting unless a Co-owner who 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 Co-owner objects shall be void.

I. Waiver of Notice. Waiver of notice of a meeting of the Co-owners shall be deemed the equivalent of proper notice. Any Co-owner may in writing waive notice of any meeting of the Co-owners either before or after such meeting. Attendance at a meeting by a Co-owner, whether in person or by proxy, shall be deemed waiver by such Co-owner of notice of the time, date and place thereof unless such Co-owner 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

*Make them
50%
ownership
interest*

thereat unless objection to lack of notice is raised before the business of which proper notice was not given is put to a vote.

J. Place of Meeting. All meetings of the Co-owners shall be held upon the Property or at such other place which is convenient to the Co-owners as the President of the Council or the Board of Directors may direct.

K. Adjournment. Any meeting of the Co-owners may be adjourned from time to time for periods not exceeding forty-eight (48) hours by vote of Co-owners holding a majority of the votes represented at such meeting, regardless of whether a quorum is present. Any business which 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.

L. Order of Business. The order of business at all meetings of the Co-owners shall be as follows:

1. Roll Call;
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. Election of Inspectors of election (when required);
8. Election of Directors (when required);
9. Unfinished business;
10. New business.

M. Minutes of meetings. The Secretary of the Council shall prepare, or cause to be prepared, and keep accurate minutes of every meeting of the Co-owners. Such minutes shall be made available for examination and copying by any Co-owner at any reasonable time.

N. Who May Act for a Co-owner. 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 trust shall act by any trustee thereof, and any other legal entity shall act by any managing agent thereof. When a Co-owner consists of two or more persons, any one of such persons shall be deemed authorized to act for all in taking any action on behalf of such Co-owner unless another of such persons objects, in which case the votes which such Co-owner would otherwise be entitled to cast may not be cast.

O. Proxies. Any Co-owner may by written proxy designate an agent to cast the votes of such Co-owner. Unless otherwise stated therein, a proxy shall be deemed to confer the authority to execute consents and waivers and to exercise the right to examine the books and records of the Council. A proxy may be revocable or irrevocable but shall be deemed revocable at will unless otherwise specified therein. No proxy shall be honored until delivered to the Secretary of the Council.

ARTICLE II

BOARD OF DIRECTORS

A. Form of Administration. The administration of the Council and the Property shall be vested in a Board of Directors consisting of not less than three (3) nor more than five (5) Directors elected from the Co-owners. Provided however, that notwithstanding anything

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the Property to the Horizontal Property Act of South Carolina, or its successor in interest in the Property, owns fewer than twenty-five (25%) percent of the Apartments in the Property encompassing Phase I or until the passage of three (3) years from the date of recording of the Master Deed for the regime, whichever first occurs, there shall be not more than three directors and Middleborough limited partnership or its successors shall be entitled to designate two of such directors, and any successors to such directors due to vacancy for any reason. The third directorship shall remain vacant until Middleborough limited partnership or its successor has conveyed Apartments in Phase I entitled to more than sixty-seven (67%) percent of the regime votes. Upon such conveyance of Apartments representing more than sixty-seven (67%) percent of the regime votes, the third director shall be elected by a majority vote (according to percentage interest as provided in the Master Deed) of Apartments owned by persons other than Middleborough limited partnership, or its successor:

D. Authorities and Duties. The authorities and duties of the Board of Directors shall include the following:

1. To provide for the security of the Property;
2. To provide for the maintenance, repair and replacement of the Common Elements;
3. To employ and discharge the persons necessary for the operation, maintenance, repair and replacement of the Common Elements;
4. To collect from the Co-owners their respective shares of the Common Expenses;
5. To insure the Property as hereinafter provided;
6. To enact reasonable regulations governing the operation and use of the Property;
7. To enforce the terms of the Horizontal Property Act, the Master Deed and these Bylaws and the Regulations promulgated pursuant hereto as hereinafter provided; and
8. To administer the Council and the Property on behalf of and for the benefit of all Co-owners.

C. Qualification. Only an ⁽¹⁾ individual who is a Co-owner, or who together with another person or other persons is a Co-owner, or who is an officer of a corporation, a general partner of a partnership, an associate of an association, a trustee of a trust, or a managing agent of any other legal entity which is a Co-owner, or which together with another person or other persons is a Co-owner, may be elected or continue to serve as a Director of the Council. The number of Directors provided at any one time by a Co-owner which is an organization or which consists of more than one individual shall not exceed the number of Apartments owned by such Co-owner.

D. Election and Term. Subject to the provision of Article II-A, above, the initial Board of Directors shall be elected at the organizational meeting of the Council and shall serve until the first annual meeting of the Co-owners. At each annual meeting of the Co-owners a new Board of Directors shall be elected to succeed the Directors whose terms expire at such meeting. Each Director shall be elected to serve until the next annual meeting of the Co-owners following his election. A director may be elected to succeed himself, and a Director shall be deemed to continue in office until his successor has been elected and has assumed office.

E. Removal. A director may be removed from office with or without cause by the affirmative vote of a Majority of the Co-owners.

F. Vacancies. Any vacancy in the Board of Directors caused by any reason shall be filled by a new Director elected by the affirmative vote of a Majority of the Co-owners.

G. Voting. Each Director shall have one (1) vote on all matters acted upon by the Board of Directors. The affirmative vote of a simple majority of

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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.

II. Quorum. Two (2) Directors shall constitute a quorum for the transaction of business.

I. Consents. Any action which 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.

J. Referendum. Any action taken by a vote of a Majority of the Co-owners shall be binding upon the Board of Directors and shall supersede any inconsistent action previously or thereafter taken by the Board of Directors, but no such action by the Co-owners shall impair the enforceability of any contract duly authorized or entered into by the Board of Directors pursuant to authority granted in the Horizontal Property Act, the Master Deed or these Bylaws.

K. Annual Meetings. An annual meeting of the Board of Directors shall be held during each fiscal year within ten (10) days following the annual meeting of the Co-owners. The time, date and place of the annual meeting of the Board of Directors shall be fixed at the annual meeting of the Co-owners by mutual consent of the Directors present at such meeting, and no further notice thereof shall be necessary. Any business which is appropriate for action of the Board of Directors may be transacted at a regular meeting.

L. Regular Meetings. Regular meetings of the Board of Directors shall be held at such times, dates and places as the Board of Directors may determine from time to time, but at least three (3) regular meetings shall be held each fiscal year. Any business which is appropriate for action of the Board of Directors may be transacted at a regular meeting.

M. Special Meetings. Special meetings of the Board of Directors may be called from time to time by the President of the Council and shall be called upon the written request of three (3) of the Directors. Only such business as is stated in the notice of meeting shall be transacted at a special meeting unless all Directors waive notice of any additional business.

N. Notice of Meetings. Written notice of every regular or special meeting of the Board of Directors stating the time, date and place of the meeting and, in the case of a special meeting, the business proposed to be transacted shall be given to every Director not fewer than three (3) 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 a Director who 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.

O. 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 meetings. Attendance at a meeting by a Director shall be deemed a waiver 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 thereat unless objection to lack of notice is raised before the business of which proper notice was not given is put to a vote.

P. Place of Meeting. All meetings of the Board of Directors shall be held upon the Property or at such other place convenient to the Directors as the President of the Council or the Board of Directors may direct. Meetings may be conducted by telephone if all Directors consent.

Q. Minutes of Meetings. The Secretary of the Council shall prepare, or cause to be prepared, and keep accurate minutes of every meeting of the Board of Directors. A copy of such minutes shall be distributed to each Co-owner within thirty (30) days following each meeting, and all such minutes shall be made available for examination and copying by any Co-owner at any reasonable

R. Compensation. The Directors shall serve without compensation but shall be entitled to reimbursement by the Council for expenses incurred in the conduct of their duties.

ARTICLE III

OFFICERS

A. Designation. The Council shall have a President, a Vice President, a Secretary and a Treasurer. The Council may also have one or more assistants to the Secretary and to the Treasurer and such other officers as may be necessary from time to time. The offices of the Secretary and the Treasurer may be filled by the same individual.

D. Qualifications. The President and the Vice President must be Directors, and all other officers must be individuals who are qualified to be Directors.

C. Election and Term. Officers of the Council shall be elected at each annual meeting of the Board of Directors and at such other times as may be required to fill vacancies of 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.

D. Removal. Any officer may be removed from office at any time with or without cause by the Board of Directors or by the Co-owners. An officer removed by the Co-owners shall be replaced only by the Co-owners.

E. President. The President shall be the chief executive officer of the Council. He shall preside at all meetings of the Council and of the Board of Directors at which he is present. He shall have all of the general powers and duties which are usually vested in the office of the president of an unincorporated association, including but not limited to the power to appoint committees from among the Co-owners from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Council.

F. Vice President. The Vice President shall take the place and perform the duties of the President whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other Co-owner to take the place and perform the duties of the President on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors.

G. Secretary. The Secretary shall keep the minutes of all meetings of the Co-owners and of the Board of Directors, shall have charge of such books and papers as the Board of Directors may direct, and shall, in general, perform all the duties incident to the office of secretary of an incorporated association.

H. Treasurer. The Treasurer shall have custody of and responsibility for Council funds and securities and shall keep the financial records and books of account belonging to the Council. If a Manager is employed as hereinafter provided, custody of Council 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 of Directors so determine, but in such case the Treasurer shall verify the amounts of Council 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.

I. Compensation. The officers may receive such compensation as the Co-owners may determine and shall be entitled to reimbursement by the Council for expenses incurred in the conduct of their duties.

ARTICLE IV

MANAGER

7 A. Employment. The Board of Directors may employ a professional Manager to assist in or take charge of the administration of the Council and the Property.

B. Qualification. The Manager may be a corporation or other legal entity. No individual who is a Director or an officer of the Council or who resides in the home of a Director or an officer of the Council shall be the Manager or an officer, director, or agent of the manager.

C. Authority and Duties. The Manager shall have such authority and duties as may be determined by the Board of Directors and shall report to the Board of Directors or to the President, as the Board of Directors may determine.

D. Compensation. The Manager shall receive such compensation as the Board of Directors may determine.

ARTICLE V

FINANCES

A. Fiscal Year. The fiscal year of the Council shall be the calendar year unless the Co-owners shall otherwise determine.

B. Budget. The Board of Directors shall prepare, or cause to be prepared, and submit to the Co-owners at each annual meeting of the Co-owners a proposed budget for the Council for the fiscal year in which the meeting is held. The proposed budget shall set forth with particularity the anticipated Common Expenses for the fiscal year and the amount of money needed to establish reasonable reserves for the payment of future or unforeseen Common Expenses.

C. Approval of Budget. The proposed budget, as it may be amended upon motion of any Co-owner, shall be submitted to a vote of the Co-owners and when approved by the affirmative vote of a Majority of the Co-owners shall become the Budget of the Council for the fiscal year (the "Budget"). The terms of the Budget shall be binding upon the Board of Directors until such terms are amended by action of the Co-owners.

D. Regular Assessments. The funds required by the Budget shall be collected from the Co-owners by the Board of Directors in equal monthly or quarterly assessments as the Board of Directors may determine.

E. 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 the Co-owners shall be collected from the Co-owners by the Board of Directors in such installments as the Co-owners shall determine.

F. Individual Assessments. Any payments to the Council which one or more, but fewer than all, of the Co-owners shall be obligated to make pursuant to the terms of the Horizontal Property Act, the Master Deed or these Bylaws shall be due upon demand and shall be collected by the Board of Directors.

G. Collection. Co-owners shall be liable for all assessments and shall pay the same promptly when due. The Board of Directors shall take prompt and appropriate action 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 Co-owner owing the same shall be required to pay all reasonable costs of collection, including attorney's fees. Assessments together with any and all late charges or penalties and costs of collection as provided herein, shall constitute a lien on the Apartments as provided in the Horizontal Property Act, these Bylaws and the Master Deed.

H. Penalty. An assessment not paid within ten (10) days following the date when due shall bear a penalty of five dollars (\$5.00) plus one percent (1%) of the assessment per month from the date when due. The penalty shall be

This paragraph only, an unpaid assessment shall not be deemed overdue until the Board of Directors has delivered to the Co-owner owing the same a demand for payment, unless the Board of Directors has within thirty (30) days prior to the date when due delivered to such Co-owner a written notice of the amount and the date due, in which case no further demand shall be necessary. The Board of Directors may in its discretion waive all or any portion of a penalty or interest imposed pursuant to this paragraph if it affirmatively appears that the failure to pay the assessment when due was caused by circumstances beyond the control of the Co-owner.

I. Accounts. The Board of Directors shall maintain on behalf of the Council a checking account with a state or federally chartered bank having an office in the county where the Property is situated. The Board of Directors may also maintain on behalf of the Council an interest-bearing savings account with a state or federally chartered bank, savings and loan association or building and loan association. If a Manager is employed, said accounts may be maintained in the name of the Manager if the Board of Directors approves. All funds of the Council shall be promptly deposited in one of said accounts, except that the Board of Directors may maintain a petty cash fund of not more than fifty dollars (\$50.00) for payment for minor current expenses of the Council. The books and records relating to any account of the Council shall be made available for examination and copying by any Co-owner at any reasonable time.

J. Payments. The Board of Directors shall provide for payment of all debts of the Council from the funds collected from the Co-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 fifty dollars (\$50.00) shall be reviewed and approved by the President or the Board of Directors before payment is made. All checks and requests for withdrawals drawn upon any account of the Council shall be signed by the President and the Treasurer or by any two (2) alternate officers of the Council designated by the Board of Directors. If a Manager is employed, the Board of Directors may authorize the Manager to draw checks upon the account of the Council. The Board of Directors may also authorize the Manager to make disbursements from the petty cash fund, if any.

K. Bonding. The Board of Directors shall secure from a surety company rated "AAA" or better by Best's Insurance Reports a fidelity bond in an amount of not less than ten thousand Dollars (\$10,000.00) covering every individual authorized to withdraw funds from any checking or savings account maintained by the Council. The cost of the bond shall be a Common Expense.

ARTICLE VI

MAINTENANCE AND IMPROVEMENTS

A. Maintenance by Board of Directors. The Board of Directors shall provide for the maintenance, repair and replacement of the Common Elements and shall employ and dismiss the personnel required for such maintenance, repair and replacement.

B. Maintenance by Co-owners. Each Co-owner shall maintain his Apartment in good condition and repair.

C. Default by Co-owner. In the event that any Co-owner fails to perform the maintenance required of such Co-owner by these Bylaws or by any lawful Regulation enacted pursuant hereto 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 Co-owner or which substantially detracts from the value or appearance of the Property, the Board of Directors shall, after giving such Co-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 Co-owner by an individual assessment.

D. Expenses. Except as hereinafter provided, the expenses of all maintenance, repair and replacement provided by the Board of Directors shall be Common Expenses. The expenses of maintenance, repair or replacement which are necessitated by (1) the failure of a Co-owner to perform the maintenance required by these Bylaws or by any lawful regulation enacted pursuant hereto,

loss which is to be borne by a Co-owner in accordance with Article VII of these Bylaws shall be charged to such Co-owner by an individual assessment.

E. Improvements. The Board of Directors shall provide for the making of such improvements to the Common Elements as may be approved from time to time by the Co-owners. The cost of such improvements shall be Common Expenses; provided, however, that no Co-owner shall without his consent be assessed in any one year for the making of improvements to the Common Elements an amount in excess of one percent (1%) of the value of his Apartment as set forth in the Master Deed.

ARTICLE VII

RECONSTRUCTION

A. Decision of Co-owners. In the event of substantial damage to or destruction of any portion of the Property, the damage or destruction shall promptly be appraised by the Board of Directors. If more than two-thirds (2/3) of the Property has been destroyed, the Board of Directors shall promptly call a special meeting of the Co-owners to determine in the manner provided in the Master Deed whether the Property shall be reconstructed. In the event that the Co-owners determine not to reconstruct the Property, the Secretary shall execute a certificate to that effect and cause the same to be recorded in the same manner as these Bylaws; provided, however, that:

1. Any restoration or repair of the Property, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Master Deed and the original plans and specifications referenced in the Master Deed unless other action is approved by Mortgagees on Apartments which have at least fifty-one (51%) percent of the votes of Apartments subject to mortgages, and;
2. Any election to terminate the legal status of the project after substantial destruction or a substantial taking in condemnation of the Property must require the approval of Mortgagees of Apartments which have at least fifty-one (51%) percent of the votes of Apartments subject to mortgages.

B. Reconstruction. Unless the Co-owners affirmatively determine in the manner provided in the Master Deed not to reconstruct the Property following damage or destruction thereof, the Board of Directors shall promptly provide for such reconstruction. Such reconstruction shall encompass and include repair and replacement of all floor coverings, fixtures and appliances originally installed in the Apartment by the builder or equivalent replacements thereof installed by a subsequent Co-owner. If the cost of such reconstruction exceeds ten thousand dollars (\$10,000.00), the Board of Directors shall employ an architect licensed to practice in the jurisdiction or jurisdictions in which the Property is situated to supervise the reconstruction. It shall be the duty of such architect to inspect the progress of the reconstruction at regular intervals and to submit written authorizations to the Insurance Trustee hereinafter identified for the payment for work performed. When an architect is not required by the terms hereof, the Board of Directors may perform such inspections and submit such authorizations.

C. Costs. The Board of Directors shall employ for the purpose of reconstructing the Property the proceeds of any insurance obtained on the Property by the Board of Directors on behalf of the Council. If such insurance proceeds do not cover the cost of the reconstruction, the deficiency shall be borne by the Council as a Common Expense up to an amount equal to the sum of (i) the amount deducted pursuant to a "loss deductible" clause of the insurance policy plus (ii) fees and expenses of the Insurance Trustee hereinafter identified. Any deficiency in excess of such amount shall be borne by the Co-owners in proportion to their respective interests in the portion or portions of the Property reconstructed.

ARTICLE VIII

CONDEMNATION

A. Rights of Co-owners. If any portion of the Property is condemned by any authority having the power of eminent domain, each Co-owner and each Mortgagee shall be entitled to receive notice of such condemnation and to participate in the proceedings incident thereto unless otherwise prohibited by law. Each Co-owner or mortgagee, as their interest may appear, shall be entitled to an individual award to be determined by the value of his interest in the portion or portions of the Property condemned.

B. Duties of the Council. In the event that any award is received by the Council on account of condemnation of any portion or portions of the Common Elements, the Board of Directors shall promptly pay such award to the Insurance Trustee hereinafter identified as trustee for the Co-owners to be disbursed in the same manner as if it were insurance proceeds. The Board of Directors shall promptly call a special meeting of the Co-owners to determine whether any condemned portion of the Common Elements shall be replaced. If the Co-owners determine 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

INSURANCE

A. Hazard Insurance. The Board of Directors shall insure the Property on behalf of the Council for the full replacement cost thereof against all hazards and risks normally covered by a standard "all-risk" policy, including fire and lightning, and the hazards and risks covered by "extended coverage" and by "special extended coverage" in the amount of the replacement cost of the Property without regard to depreciation. Such insurance shall cover only the Apartments and the Common Elements. No insurance of the contents of any Apartment (other than the fixtures originally installed therein during construction and being a part of such Apartment) or any improvements made to an Apartment by any Co-owner shall be provided by the Board of Directors. The hazard insurance obtained by the Board of Directors may provide that an amount not to exceed one thousand dollars (\$1,000.00) shall be deductible from any indemnity payable on account of a single loss, except that in the case of loss caused by wind or hail the deductible amount may not exceed one percent (1%) of the loss. Any such deductible portion shall be borne by the Council as a Common Expense regardless of the number of Co-owners directly affected by the loss.

B. Liability Insurance. The Board of Directors shall also obtain premises liability insurance on the Property providing for a single-limit indemnity of not less than one million dollars (\$1,000,000.00) and covering bodily and personal injury and property damage. The Board of Directors shall not be required, however, to obtain public liability insurance covering accidents occurring within an Apartment or off the Property. The Board of Directors shall cause medical payment coverage to be included within the policy of liability insurance with indemnity limits of five hundred dollars (\$500.00) per person and ten thousand dollars (\$10,000.00) for each accident.

C. General Provisions: All insurance obtained on the Property by the Board of Directors shall be written in the name of the Council, and the cost of such insurance shall be a Common Expense. All such insurance shall be obtained from a company or companies licensed to do business in the State of South Carolina and rated "AAA" or better by Best's Insurance Report. No such insurance shall be permitted to expire except upon resolution of the Co-owners to that effect. Certificates of all policies of hazard insurance obtained on the Property by the Board of Directors on behalf of the Council shall be delivered upon request to any Co-owner or any person holding a mortgage on an Apartment.

D. Hazard Policy Provisions. All policies of hazard insurance on the Property obtained by the Board of Directors on behalf of the Council shall

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1. The indemnity payable on account of any damage to or destruction of the Property shall be payable to any persons holding liens on or security interest in any Apartment as their interests may appear;

2. The policy shall not be cancelled without thirty (30) days prior written notice to the Board of Directors and to every holder of a lien upon or security interest in any Apartment who is named in the policy or an endorsement thereto;

3. No Co-owner shall be prohibited from insuring his own Apartment for his own benefit;

4. No insurance obtained by a Co-owner on his own Apartment shall be brought into contribution with the insurance obtained by the Board of Directors;

5. No right of subrogation shall exist against any Co-owner or members of his household;

6. The insurer shall not be entitled to reconstruct in lieu of paying the indemnity in cash if the Co-owners determine in the manner provided in the Master Deed not to repair or restore the Property; and

7. The policy shall not be cancelled on account of the actions of one or more, but fewer than a Majority, of the Co-owners.

If a policy of insurance containing all of the foregoing provisions cannot be obtained at a reasonable cost, one or more of such provisions may be waived by unanimous resolution of the Board of Directors preceded by ten (10) days notice of every Co-owner or by resolution of the Co-owners.

E. Claims. The Board of Directors, on behalf of the Council, shall have exclusive authority to negotiate and settle on behalf of the Co-owners all claims arising under policies of hazard insurance obtained on the Property by the Board of Directors on behalf of the Council. In the event of damage to or destruction of any portion of the Property, the Board of Directors shall promptly file a claim for any indemnity due under any such policies. The Board of Directors shall simultaneously notify the holders of any liens upon or security interests in the Property who may be entitled to participate in such claim or the filing of the same.

F. Insurance Proceeds. The net proceeds received by the Board of Directors from any indemnity paid under a policy of hazard insurance obtained on the Property by the Board of Directors on behalf of the Council shall promptly be paid by the Board of Directors to an Insurance Trustee as Trustee for the Co-owners as hereinafter provided. The Insurance Trustee shall be a state or federally chartered bank selected by the Board of Directors and having trust powers and capital and surplus of five million dollars (\$5,000,000.00) or more. The Insurance Trustee shall hold the insurance proceeds in trust and disburse said proceeds, after deduction of all reasonable fees and expenses of the Insurance Trustee, as follows:

1. If the Co-owners determine in the manner provided in the Master Deed not to reconstruct the Property, the Insurance Trustee shall distribute the insurance proceeds among all the Co-owners and their mortgagees as their interest may appear in proportion to their respective interests in the portion or portions of the Property damaged or destroyed.

2. If the Board of Directors is required to provide for the reconstruction of the Property, the Insurance Trustee shall disburse the insurance proceeds to the person or persons employed by the Board of Directors to effect such reconstruction in accordance with written authorizations submitted to the Insurance Trustee by the architect supervising the reconstruction or by the Board of Directors. Any portion of the insurance proceeds remaining after all the costs of reconstructing the Property have been paid shall be distributed to the Co-owners in proportion to their interest in the

In making disbursements of the insurance proceeds, the Insurance Trustee shall be entitled to rely without further inquiry upon the written authorizations submitted as provided above or upon any written certification of facts submitted to the Insurance Trustee by the Board of Directors as hereinafter provided. The Insurance Trustee shall in no event be responsible for obtaining insurance on the Property, paying the premiums on any such insurance or filing claims for any payments due under any such insurance.

G. Insurance by Co-owners. Each Co-owner shall be responsible for obtaining such amounts of the following types of insurance as he deems necessary or desirable:

1. Hazard insurance on his Apartment for his own benefit;
2. Hazard insurance on the contents of his Apartment and on improvements made to his Apartment; and
3. Liability insurance covering accidents occurring within his Apartment.

Any Co-owner who obtains hazard insurance on his Apartment for his own benefit shall within thirty (30) days of obtaining the same deliver to the Board of Directors a certificate evidencing such policy of insurance.

ARTICLE X

NOTICE AND CONSENT OF CERTAIN MORTGAGEES REQUIRED

A. Notice of Action: In addition to any other notice provisions contained in these Bylaws, in the Master Deed or elsewhere, and not in lieu thereof, upon written request to the Council of Co-owners, identifying the name and address of the holder, insurer or guarantor and the Apartment Unit number, any mortgage holder or insurer or guarantor will be entitled to timely written notice of:

1. Any condemnation loss or any casualty loss which affects a material portion of the Property or any Apartment Unit on which there is a first mortgage held, insured, or guaranteed by the requesting mortgage holder or insurer or guarantor, as applicable;
2. Any delinquency in the payment of assessments or charges owed by an owner of an Apartment Unit subject to a first mortgage held, insured or guaranteed by such holder or insurer or guarantor, which remains uncured for a period of sixty (60) days;
3. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Council of Co-owners;
4. Any proposed action which would require the consent of a specified percentage of mortgage holders as specified in Article X B, below.
5. Any election not to reconstruct the Property after substantial damage by fire or other casualty or any election to terminate, regroup or merge the Regime.

B. Consent of Mortgagees: Except as provided in Article V of the Master Deed, but in addition to any other similar provisions contained herein, the consent of the Owners of Apartment units to which at least sixty-seven percent (67%) of the votes in the Council of Co-owners are allocated and the approval of holders of mortgages on Apartment Units which have at least fifty-one percent (51%) of the votes of Apartment Units subject to mortgages, shall be required to add or amend any material provisions of these Bylaws, the Master Deed or other Regime documents of the Property which establish, provide for, govern or regulate any of the following:

1. Voting;
2. Assessments, assessment liens or subordination of such

3. Reserves for maintenance, repair and replacement of the common areas;
 4. Insurance or Fidelity Bonds;
 5. Rights to use of the common areas;
 6. Responsibility for maintenance and repair of the several portions of the project;
 7. Expansion or contraction of the project or the addition, annexation or withdrawal of property to or from the project;
 8. Boundaries of any Apartment;
 9. The interests in the Common Areas;
 10. Convertibility of Apartment Units into Common Areas or Common Areas into Apartment Units;
 11. Leasing of Apartment Units;
 12. Imposition of any right of first refusal or similar restriction on the right of an Apartment Unit owner to sell, transfer, or otherwise convey his Apartment; and
 13. Any provisions which are for the express benefit of mortgage holders, or insurers or guarantors of first mortgages on Apartment Units.
- C. Presumption of Consent: Any mortgagee who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

ARTICLE XI

RESTRICTIONS AND REGULATIONS

A. Restrictions. The use of the Property shall be subject to the following restrictions:

1. Apartments in Phase I shall be used only as residences.
2. No Co-owner shall maintain or permit any nuisance within his Apartment or unreasonably interfere with the use and enjoyment of the Property by any other person entitled to the same by creating anywhere on the Property or permitting within his Apartment the creation of excessive noise, smoke or offensive odors. No person shall maintain on the Property, and no Co-owner shall permit within his Apartment, any condition which is unreasonably hazardous to the life, health or property of any other person.
3. No person shall make any additions to or perform any work upon the Common Elements or otherwise alter the Common Elements without the express authorization of the Board of Directors. No Co-owner shall alter or permit the alteration of the external appearance of any portion of his Apartment without the express approval of the Board of Directors.

B. Regulations. The Board of Directors shall adopt and amend from time to time such reasonable regulations ("Regulations") governing the operation and use of the Property as they may deem necessary or desirable. It shall not be necessary to record Regulations newly adopted or the amendment or repeal of existing Regulations, but no Co-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 such Co-owner.

C. Enforcement. The Board of Directors shall enforce the terms of the Horizontal Property Act, the Master Deed and these Bylaws and the Regulations promulgated pursuant hereto and shall take prompt and appropriate action to

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correct any violations of the same. In addition to any other remedy to which the Council or any Co-owner may be entitled, the Board of Directors may impose against a Co-owner reasonable fines not to exceed a total of ten dollars (\$10.00) per day for any violation of the terms of the Horizontal Property Act, Master Deed or these Bylaws or of the Regulations promulgated pursuant hereto. Such fines shall be collected by individual assessment. Each day during which a violation occurs or continues may be deemed a separate offense.

D. Responsibility of Co-Owners. Each Co-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 Co-owner shall not relieve any member of his household or any of his tenants, agents or guests for any liability to the Council or to a Co-owner for their own acts.

ARTICLE XII

LIABILITIES AND INDEMNIFICATION

A. Liability of Council. No Co-owner shall be liable upon a debt or tort of the Council for any amount in excess of such portion of the liability of the Council which bears the same ratio to the total liability as to percentage of interest of such Co-owner in the Common Elements bears to the whole. All correspondence of the Council and all contracts executed by the Council shall incorporate the following recital:

The Middleborough Council of Co-owners is an unincorporated association established pursuant to the Horizontal Property Act of South Carolina. No member of the Council shall be liable upon a debt of the Council for an amount in excess of such portion of the debt which bears the same ratio to the total debt as the number of votes in the Council which the member is entitled to cast bears to the total number of votes which all members of the Council are entitled to cast.

B. Indemnification Among Co-owners. Each Co-owner shall be entitled to contribution from and indemnification by every other Co-owner to the extent that such Co-owner discharges or is required to discharge any portion of any liability of the Council in excess of such Co-owner's proportionate share thereof, except that no Co-owner shall be required to provide contribution or indemnification on account of a debt which was due and payable prior to the time such Co-owner became a Co-owner.

C. Liability of Directors and Officers. No Director or officer of the Council shall be liable to any Co-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 Horizontal Property Act, the Master Deed or these Bylaws.

D. Indemnification of Directors and Officers. The Council shall indemnify and defend each Director and each officer of the Council from any liability claimed or imposed against him by reason of his position or actions as a Director or an officer of the Council if all of the following conditions are satisfied:

1. Such Director or officer is not required to bear such liability by the terms of the Horizontal Property Act, the Master Deed or these Bylaws;
2. Such Director or officer gives the Council adequate notice of the claim or imposition of liability to permit the Council reasonable opportunity to defend against the same; and
3. Such Director or officer cooperates with the Council in defending against the liability.

The expense of indemnifying a Director or an officer shall be a Common Expense and shall be borne by all the Co-owners, including such Director or officer, in accordance with their percentage of ownership.

ARTICLE XIII

ATTESTATIONS AND CERTIFICATIONS

A. Attestation of Documents. The presence of the signature of the Secretary or an assistant secretary of the Council on any contract, conveyance or any other document executed on behalf of the Council by another officer of the Council shall attest:

1. That the officer of the Council 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 Council and that the signature of such officer subscribed to the document is genuine; and

2. That the execution of the document on behalf of the Council has been duly authorized.

B. Certification of Documents. When any document relating to the Property or the Council is certified as authentic by the Secretary or an assistant secretary of the Council, a third party without knowledge or reason to know to the contrary may rely on such document as being what it purports to be.

C. Certification of Actions and Facts. When a written statement setting forth (i) actions taken by the Co-owners or by the Board of Directors or (ii) facts relating to the Property or the Council as determined by the Board of Directors is executed by the Secretary or an assistant secretary of the Council, a third party without knowledge or reason to know to the contrary may rely on such statement as factually true and correct.

ARTICLE XIV

AMENDMENTS

A. Procedure. These Bylaws may be amended from time to time by resolution adopted by the affirmative vote of Co-owners entitled to cast a total of no fewer than seventy-five (75) votes. No amendment shall be effective unless and until recorded as an amendment to the Master Deed as required by the Horizontal Property Act.

B. Effect. All Co-owners, tenants of Co-owners, employees of Co-owners and tenants, and any other persons that may in any manner use the Property or any part thereof shall be bound to abide by any amendment to these Bylaws duly adopted and recorded as specified herein.

ARTICLE XV

MISCELLANEOUS

A. Record of Ownership. Any person who acquires title to an Apartment except a person who acquires title to an Apartment merely as security for a debt, shall promptly inform the Board of Directors of the identity of such person and the date upon and manner in which title to the Apartment was acquired. The Board of Directors shall maintain a record of the names of all Co-owners and of the dates upon which they acquired title to their Apartments.

B. Notices. Any notices or documents placed in the mail receptacle or

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D. Conflicts. In the event of any conflict between these Bylaws and the Horizontal Property Act or the Master Deed, the Horizontal Property Act or the Master Deed shall control, as appropriate. In the event of a conflict between these Bylaws and the Regulations promulgated pursuant hereto, these Bylaws shall control.

E. 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.

F. 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.

G. 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.

E.D. 593 PAGE 142

ELECTRONICALLY FILED - 2019 Feb 28 4:11 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4001231

Middleborough

Horizontal Property Regime



Rules and Regulations

Revised January 7th 2019

ELECTRONICALLY FILED - 2019 Feb 28 4:11 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4001231

Index

I.	SECURITY	2
II.	RESIDENT AND STAFF RELATIONSHIPS	3
III.	MANAGEMENT RESPONSIBILITIES	4
IV.	VEHICLES – REGISTRATION AND PARKING	4
V.	COMMON AREAS – GENERAL	6
VI.	COMMON AREAS - ELEVATOR, LOBBIES & RESIDENT HALLWAYS.....	6
VII.	COMMON AREAS - COMMUNITY ROOM.....	7
VIII.	COMMON AREAS - SWIMMING POOL.....	7
IX.	COMMON AREAS - EXERCISE ROOMS	8
X.	COMMON AREAS – GROUND LEVEL	8
XI.	COMMON AREAS - TENNIS COURTS	9
XII.	PETS	9
XIII.	REPAIRS AND RENOVATIONS.....	9
XIV.	NOISE AND ODORS	12
XV.	MOVING AND APPLIANCE DELIVERIES.....	12
XVI.	BUILDING APPEARANCE	13
XVII.	TRASH AND RECYCLING.....	14
XVIII.	GUESTS AND RENTERS	14
XIX.	COMMUNICATIONS POLICY	15
XX.	MISCELLANEOUS	15
XXI.	SHORT TERM RENTALS.....	17
XXII.	GARAGE SITE PLANS.....	18

Middleborough Property Regime – Rules and Regulations

The rules outlined in this booklet are in place to ensure the peaceful enjoyment, maintenance thereof, and security of Middleborough's residents. The rules apply to all co-owners, residents, and guests and will be enforced by the Middleborough Horizontal Property Regime, its Board of Directors, and its employees. Charges, fines or costs associated with any violation of these Rules will be treated as an assessment, as defined in the Bylaws, unless otherwise specified. Co-owners may request a variance for any Rule that may require special consideration for specific circumstances.

The Rules and Regulations for the Middleborough Horizontal Property Regime contained here in supersedes and replaces any previously published revision thereof.

From time to time the Middleborough Horizontal Property Regime Board may update these Rules and Regulations. Such updates will be approved by the Board at an open meeting and shall be binding and enforceable by the Regime.

A co-owner is a person who owns the condominium unit and pays the regime fees, assessments, and property taxes. A resident is a person who resides in the condominium. Residency is established by receiving mail at Middleborough under the unit number occupied and paying utility costs and other related expenses for the unit. A guest is a person whose mailing address is not that of any Middleborough unit and who is temporarily housed for any length of time in a co-owner's or resident's unit. A tenant is a person who is leasing any of the commercial spaces at Middleborough.

ELECTRONICALLY FILED - 2019 Feb 28 4:11 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4001231

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4001231

Middleborough Property Regime – Rules and Regulations

I. SECURITY

- A. The security and quiet enjoyment of all co-owners/residents (hereto known as residents) is a primary goal of Middleborough management. Every resident should be courteous to their neighbors and considerate of their rights and expectations while living at Middleborough.
- B. Middleborough is a "Crime Watch" area and residents should report immediately any suspicious behavior or activity in or outside the building to the security officer or management.
- C. All entrances to the building will be secured at 9:00 p.m. each evening until 7:00 a.m. the following morning. Residents have access to the building at all times; unaccompanied guests and all workers must *sign in* prior to being allowed into residential areas of the building.
- D. Deliveries may be made to residential areas of the building provided that the resident has notified the security officer on duty that a delivery is expected, or the security officer is able to confirm by phone that the resident is home to take the delivery. The delivery agent must sign in and present a photo ID to the security officer on duty before being allowed to board an elevator.
- E. Contractors *bringing equipment into the building must enter and leave the building using the ground floor loading entrance*. Contractors will not be allowed into the residential areas of the building without specific permission /authorization of the resident in whose unit work is being done. All contractors are required to sign in; *further, they* must present a photo ID to the security officer on duty if asked.
- F. Any activity prohibited by law is strictly forbidden on Middleborough property and should be reported immediately.
- G. Customers and clients of commercial businesses of Middleborough are not permitted in the residential areas of the building. Further, those customers and clients may not use the pool or the pool deck.
- H. Key fobs are used to control access to locked areas that residents have the right to enter. Fobs may be purchased at the management office.
- I. Key fobs are registered to the current holder, and conveyance after a unit sale or change of leaser should be communicated to the management office so that they fob will be registered with the new resident. Failure to communicate may result in the fob being deactivated without warning.

J. Key fobs not used at least once every 6 months will be automatically deactivated. Fobs can be reactivated by residents by visiting the management office.

II. RESIDENT AND STAFF RELATIONSHIPS

A. The staff of Middleborough, including the site manager, the security officers and maintenance personnel, are all employed under contracts with the Middleborough Horizontal Property Regime. They are hired to perform specific duties and functions as outlined in their respective contracts. Residents are asked to treat the staff with respect and common courtesy. A professional, business-like work environment is expected. The US Department of Labor laws governing appropriate work environments will apply. Residents violating the labor law will receive a written warning letter at a first offense, with subsequent violations being referred to the regime attorney.

B. The site manager is responsible for the day-to-day management of the facility and their time is extremely valuable given the issues to be dealt with on a daily basis. A professional decorum must be maintained between the site manager and the residents. Chatty discussions should be avoided. If a resident has a question or problem that needs to be addressed by management, this should be communicated concisely.

C. The security officers are on site to provide limited assistance to the residents of Middleborough and to ensure the building is under watch twenty-four hours a day. Security officers have a serious responsibility for the security and safety of residents of Middleborough. These officers are not expected or required to provide personal services for residents.

D. Maintenance personnel have specific duties to perform in the building and are not to be directed by residents to perform any service or repairs except in an emergency. Maintenance personnel are instructed to perform those duties as directed by the Site Manager or Officer of the Regime.

E. Management employs a maintenance engineer to service the physical plant. In-unit service will be provided for emergency repairs that, if not done, would impact abutting units. Residents are billed for such in-unit emergency services. A resident needing any emergency service gives tacit approval for admittance to their unit.

ELECTRONICALLY FILED - 2019 Feb 28 4:11 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4001231

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4001231

Middleborough Property Regime -- Rules and Regulations

III. MANAGEMENT RESPONSIBILITIES

- A. The Board of Directors hires a management company to assist with the day-to-day operation of Middleborough and to advise the Board on various issues. *Residents should communicate directly with the site manager to report leaks, rules violations, and issues that affect the common elements such as housekeeping, grounds maintenance, and building maintenance.* If the management office is closed, and the issue poses a danger to property or an individual, the security officer on duty should be notified.
- B. Issues that need to be addressed to the Middleborough Board of Directors should be communicated in writing to the Board president via the management office using either a hard copy letter or email.
- C. The management company is expected to carry out the policies set by the Board. If a resident disagrees with a policy, the resident should bring the issue to the attention of the Board at an open Board meeting or submit a letter to the Board via the management office.
- D. Resident to resident disputes should be handled between the parties involved. Management is not required or encouraged to get involved in any such dispute residents are having with their neighbors.

IV. VEHICLES – REGISTRATION AND PARKING

- A. Residents must register their vehicles (including mopeds, motorcycles, boats, trailers, and RV's) with the site manager within five (5) days of moving in. A numbered sticker will be issued and must be placed on the vehicle in the location designated on the sticker application directions. Should the resident change vehicles or license plates, a new sticker is required. If a resident moves, the Middleborough registration is no longer valid.
- B. Residents are assigned one parking space per unit according to site plan at the end of this document.
- C. Gate remotes used to gain entrance to the garage's first level and the reserved parking spaces may be purchased at the management office.
- D. Vehicle registration forms are available at the management office.

Middleborough Property Regime – Rules and Regulations

- E. The parking area located on the south side of the building is reserved for handicapped parking as indicated by the striping and signage. No parking is allowed in handicapped parking spaces without a valid current handicapped parking permit. Violators' cars will be towed without notice and at the owner's expense. Violators are subject to a \$500 fine from the city as well.
- F. Stopping immediately adjacent to and in front of the south entrance is not allowed except for loading and unloading passengers. Drivers must remain in the vehicle in this area. This road is designated as a fire lane to accommodate emergency vehicles. Cars parked there may be towed without notice.
- G. The area located at the north end of the building is the service entrance and is designated exclusively for loading and unloading. There is a thirty (30) minute parking limit in this lot. The lot is to be used solely for deliveries and for moving into and out of the building. Residents needing more time than 30 minutes to load or unload their vehicle must get authorization from the security officer to exceed the parking limit. Towing in this lot is enforced if a resident blocks the dumpsters, recycling bins, or exceeds the 30-minute parking limit.
- H. Guest and resident parking is provided in the west lot above the swimming pool. Residents must notify management if any long-term guests will need parking. It is the responsibility of the resident to inform their guests of the parking regulations.
- I. The east lot is designated for commercial vehicles and the commercial tenants on the ground and first floors. Residents choosing to park in this lot do so at their own risk, as towing may be enforced at any time by the commercial tenants.
- J. Head-in parking is recommended for all vehicles using the outdoor parking lots, and is required for trucks, vans, and SUV's in order to keep sidewalks clear and lawn areas free for groundskeeping.
- K. Residents must register the vehicles of their long-term (one-month or longer) guests with the management office.
- L. Parking lots are not to be used for any purpose other than parking.
- M. Motorcycles, mopeds, and bicycles are not allowed to be parked or be driven on sidewalks, grass, or delivery areas.
- N. Vehicles are not to be washed or serviced anywhere on the Middleborough premises.

Middleborough Property Regime – Rules and Regulations

O. Vehicles that are inoperable or chronically neglected (including but not limited to flat tires) and vehicles that do not have current valid registration may not be parked anywhere on Middleborough property. Such vehicles are subject to towing after the vehicle has been tagged by the security office for 24 hours.

P. Bicycles can be stowed on the first or second level of the garage in the racks provided.

V. COMMON AREAS – GENERAL

A. Residents and their guests must respect all common areas

B. Playing and/or loitering in the hallways, elevators, community rooms, and lobby is not permitted.

C. Individuals using any of the common areas must properly dispose of their trash and litter and replace any furnishings they have moved.

D. Shirts and shoes must be worn in common areas except at the pool and in the sauna rooms.

E. Sidewalks, entrances, elevators, hallways, tennis courts, pool decks and stairways must not be obstructed and must only be used for the purpose intended.

F. Commercial tenants and their customers, clients, and guests are expected to conduct their business in a quiet, professional manner and with respect and consideration for Middleborough residents at all times.

G. Any commercial vendor or client must be accompanied by a resident if they are in the reception area.

H. Smoking, including vaping, is prohibited in all common areas including the pool.

VI. COMMON AREAS - ELEVATOR, LOBBIES & RESIDENT HALLWAYS

A. Elevator areas and hallways must remain free of obstacles that could potentially block access to individual units or hinder emergency personnel and equipment.

B. Foyers on the residential floors may be decorated if the majority of the residents on the floor agree. The cost of decorating is the responsibility of the floor's residents. The Board and management are not responsible for regulating the decor in the hallway foyers.

Middleborough Property Regime – Rules and Regulations

- C. Doors to individual units must remain closed to avoid noise, smoking and cooking odors in the hallways.

VII. COMMON AREAS - COMMUNITY ROOM

- A. The community room is a shared facility. Residents may book the room for private functions once a month at no charge, provided they submit a \$50 deposit which will be returned if the room is left clean and the furniture properly positioned. Residents are responsible for any damage incurred during the time of their use. Residents should ask management or a security officer to verify the room is being left in acceptable condition.
- B. The community room has two sections which may be booked independently or together as a single unit. The Fire Marshal has rated the community room for a combined maximum of 35 people.
- C. The security officer will maintain a calendar to record all community room reservations and shall note the date, time, and purpose of the event, as well as the name and unit number of the resident making the reservation. All reservations must be made in person through the security office at least 24 hours prior to the event.
- D. The resident making the reservation must be in attendance at the function.
- E. The resident is responsible for cleaning the community room immediately following the end of the function.
- F. By making reservations, the resident agrees to: 1) repair or replace any damage or missing property of the Regime and 2) indemnify and hold harmless the Regime against any loss or injury in connection with the use of the community room.
- G. Residents may use the community room for personal activities such as reading, study, or small gatherings provided another resident has not booked the room for a function.

VIII. COMMON AREAS - SWIMMING POOL

- A. The swimming pool and adjacent areas are for the exclusive use of residents and their guests. Guests must be accompanied by a resident at all times. Residents and their guests must wear a pool pass which may be purchased at the management office.
- B. Residents may purchase up to 6 passes annually, with a per unit limit of 6 passes.
- C. There is no lifeguard on duty at the pool. All persons use the pool at their own risk.

Middleborough Property Regime -- Rules and Regulations

D. Everyone using the pool must observe the rules posted on the signage in the pool area. Some specific rules include the following:

1. Glass containers are not permitted in the pool area.
2. Activities that pose a danger to anyone in the vicinity of the pool are prohibited. Such activities include running, pushing, and diving.
3. Loud or boisterous activity or music that may disturb others is not allowed.
4. Proper swimming attire must be worn in the pool area. Shirts and footwear should be worn entering and exiting the pool area. No resident or guest should enter the building after swimming wearing wet clothing.
5. All personal items such as floats, toys, and pool noodles must be removed from the pool area when the person who brought the items leaves.
6. The pool may not be reserved for private parties.
7. The Board has authorized the security officer on duty to monitor the pool as often as necessary for unauthorized users. People in the pool area will be asked to show their pool pass. If they do not have the proper pass, or if they are unaccompanied guests, they will be required to leave.
8. If a pool umbrella is used, the resident must ensure that it is closed before leaving the pool area.

IX. COMMON AREAS - EXERCISE ROOMS

- A. Exercise and sauna rooms are restricted to their respective genders and are located on the first floor at the north end of the building. The rooms are open 24 hours a day. Access is gained using the resident's key fob.
- B. Only residents and their guests may use the facilities.
- C. Exercise equipment will not be brought into or removed from the exercise rooms without prior approval of management. Residents should report broken or unusable equipment to the site manager.
- D. Building dress codes apply when entering and leaving the exercise rooms.

X. COMMON AREAS -- GROUND LEVEL

- A. Grocery carts are provided for the convenience of the residents and should be returned to the ground level immediately after each use. Contractors shall not use the black "Middleborough" carts, they can use any other branded cart.

Middleborough Property Regime – Rules and Regulations

B. Coin operated washer and dryers are available for resident's use. Debit and credit cards may also be used.

C. Beverage and snack vending machines are located on the ground floor.

XI. **COMMON AREAS - TENNIS COURTS**

A. The tennis court is not available at this time.

XII. **PETS**

A. Presently, only cats are allowed as pets. Birds, dogs, and exotic pets are not allowed.

B. All pets must be registered with management office. *Two pets are allowed per unit.*

C. A waiver for more than two pets or for a pet currently not allowed under the current regulations may be requested. In granting waivers, the Board will consider the current pet population, the resident's past ability to care for a pet and other factors unique to the request.

D. Pet owners must transport their pets in appropriate carriers when in the common areas of the building. Pets being taken for walks must be leashed and must enter and exit the building through the loading dock on the ground floor.

E. Pet litter must be double bagged before depositing in the trash chute or must be carried to the dumpster. Residents depositing pet litter directly into the trash chute will be fined \$10 for each violation and may be billed for the cost of cleaning and disinfecting the chute. After two violations, the owner's pet privileges will be revoked.

XIII. **REPAIRS AND RENOVATIONS**

A. Plans for renovations in a residential or commercial unit must be submitted to management for review and written approval of those plans must be obtained before work begins. Work will be inspected in the presence of the co-owner by management when the work is completed.

ELECTRONICALLY FILED - 2019 Feb 28 4:11 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4001231

ELECTRONICALLY FILED - 2019 May 03 2:46 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4001231

Middleborough Property Regime – Rules and Regulations

B. MIDDLEBOROUGH WAS CONSTRUCTED PRIOR TO ASBESTOS BEING PROHIBITED IN BUILDING MATERIALS. BECAUSE ASBESTOS MAY BECOME AN ISSUE IN RENOVATIONS (I.E., DISTURBANCE OF ANY WALL, CEILING OR FLOOR SURFACE), THE BOARD OF DIRECTORS HAS REQUIRED THAT CO-OWNERS WISHING TO RENOVATE THEIR UNITS OBTAIN AN ASBESTOS SURVEY TO ENSURE THAT ANY ABATEMENT THAT MAY BE REQUIRED IS ADDRESSED PRIOR TO THE START OF CONSTRUCTION.

C. All work, both repair and renovation, must be conducted in a responsible and workmanlike manner. Co-owners must use licensed contractors for any work requiring a permit or any work for which the State requires licensed contractors. A list of contractors and sub-contractors is available at the management office. Any contractors on this list have evidenced willingness to work at Middleborough; however, neither the Regime nor Management accepts any responsibility for the quality of their work or their business practices.

D. Obtaining permits for renovations is the responsibility of the co-owner. Management may notify the city of Columbia to schedule an inspection if the co-owner has not followed proper protocols. The co-owner is responsible for paying any fines and/or court costs associated with violations the inspector uncovers.

E. No repair, maintenance, or modification of the Common Elements is permitted without written approval of the Board.

F. All contractors are required to sign in and present a photo ID at the security desk before they are allowed to proceed to the residential units.

G. Work associated with renovation and repair is limited to the hours of 8:30 a.m. to 6:00 p.m., Monday through Saturday, unless Board approval has been obtained for extended work hours. No work is permitted on holidays*.

*Holidays are: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

H. Residents are responsible for damage to any common area caused by their contractor and shall pay for the cost of replacement or repairs made therein, including plumbing fixtures, drain pipes, line stoppages, overflows, carpet, elevators and the like.

Middleborough Property Regime – Rules and Regulations

- I. Contractor's supplies, tools, and equipment must be brought into the building through the service entrance and taken to the individual unit via the service elevator only. Contractor vehicles are not permitted to park at the service entrance except to load and unload tools and supplies. Residents are responsible for reminding their contractors that there is a 30-minute parking limit at the service entrance.
- J. Contractors must remove construction debris and discarded appliances from the premises. Under no circumstances should construction debris be placed in the dumpster. Residents must ensure that their contractor properly removes all materials and debris from the common areas prior to leaving Middleborough. If the contractor fails to remove the debris, the resident must clean up what is left by their contractor within two (2) hours of the contractor's departure.
- K. HVAC units that need to be replaced must be located inside the respective utility area/closets. Condensing unit installations are not permitted on the balcony areas (outside). Only qualified and licensed contractors should replace air conditioning systems. Obtaining permits governing such replacements is the responsibility of the co-owner. Regular maintenance of the unit's HVAC system, including small motor replacement, filter replacement, or thermostat modifications does not require approval or permitting.
- L. Washer/dryer installations in individual units are not allowed. All existing washer/dry installations may be allowed to remain provided they meet code requirements and the co-owner agrees to periodic inspections as needed by management.
- M. Penetration of structural walls (concrete walls) is not allowed without prior approval of management. Plans for this work must be reviewed and approved by a licensed and qualified structural engineer at the resident's expense prior to any work being done.
- N. No electrical or plumbing modifications may be made by a resident without prior approval of management. Only licensed, qualified electricians and plumbers will be hired for such work. Proper permits must be obtained from the City of Columbia and posted on the door or next to the door outside of the unit. Minor repairs, such as unstopping a drain-line, do not require approval. Any electrical or plumbing work that is located inside a wall must be permitted and inspected.
- O. The screening and/or glassing in of balcony areas must be approved by management prior to the modification.

XIV. NOISE AND ODORS

- A. Any work in an individual unit that creates a vibration or noise must be limited to the hours of 8:30 a.m. to 6:00 p.m., Monday through Saturday. Work on holidays* is prohibited.
- B. Residents should be mindful of normal sounds associated with their occupancy, such as TV and music volume and housekeeping sounds such as vacuuming before 8:30 a.m. and after 9:00 p.m.
- C. Limiting offensive odors, (e.g., cigarette and cigar smoke, toxic or dangerous fumes, and strong cooking smells) is the responsibility of every resident. If any resident, guest or contractor working in a unit causes any odor that may be dangerous to the health of another resident, the cost of any necessary remediation will be billed to the responsible party and the resident will be subject to a fine up to \$10.00 per day that the odor is present.
- D. Doors to individual units should remain closed to prevent noise and odors from migrating into the hallways.

XV. MOVING AND APPLIANCE DELIVERIES

- A. When moving large objects, the service elevator must be used, and the objects must be brought in through the service entrance. Grocery carts are available near the vending machines for residents who have multiple packages or large deliveries. The carts must be returned to the ground floor immediately after use.
- B. Residents who are moving in or moving out must schedule their move with the security officer at least 24 hours before the move is to occur. Moving hours are between 8:30 a.m. and 6:00 p.m., Monday through Saturday. Moving on Sunday and holidays* is allowed only with management's approval. No move in or out may begin later than 1:00 p.m.
- C. Residents are responsible for any damage incurred to the common elements while moving their possessions. Common elements include, but are not limited to, the elevator, walls, carpeting, ceiling tiles, and service entrance doors.

Middleborough Property Regime – Rules and Regulations

- D. A \$100.00 deposit is required when using the service elevator for moving in or moving out. The deposit may be in the form of cash or check when moving in but must be in cash when moving out. The deposit will be eligible for return to the resident if no damage to the elevator is found, and if a resident who is moving out has returned all fobs and garage remotes. The amount of the deposit will be reviewed from time to time by the Board and adjusted if warranted.
- E. Movers, contractors, and delivery personnel must share the service elevator with each other. No single agent may lock the elevator to reserve it exclusively.
- F. Residents requiring the use of a service area parking space for longer than 30 minutes are required to notify the security officer on duty to obtain permission. Vehicles impeding the smooth flow of deliveries will be towed without notice at the owner's expense.
- G. Multiple vehicles for the same move will not be permitted in the service lot if those vehicles impede normal traffic or they create an unsafe condition for residents.

XVI. BUILDING APPEARANCE

- A. Nothing (including but not limited to clothes, rugs, sheets, towels, and blankets) may not be hung from the balcony railing at any time.
- B. Only white or off-white manufactured or designed window treatments are permitted. All colored drapes must have a white or off-white lining.
- C. Temporary balcony enclosures such as shades and curtains must be adequately secured. Management will determine if any item that hangs at the balcony's edge poses a hazard and if so, will request removal of such an item.
- D. Nothing should be thrown from or swept off the balcony including plant debris, dust/dirt, and smoking materials.
- E. No signs or advertisements are allowed to be posted on the premises.
- F. All residents must exercise care in cleaning and maintaining their individual balcony areas. Plants must have saucers to retain water. Hanging items such as plants and bird feeders must be hung 3 feet from the railings. Windsocks designed to keep pigeons away are permitted, but banners are not allowed.
- G. Balconies are not to be used as storage areas for hazardous materials or items that would diminish the esthetic décor of the building. The resident will be responsible for accidents, destruction of property, or littering if items blow off their balconies.

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- H. Only electric grills are allowed on the balconies.
- I. The management office will notify the resident of any violation, allowing five (5) business days to correct the problem. After five (5) business days, a fine of up to \$10.00 per day will be levied until corrective action is taken.

XVII. TRASH AND RECYCLING

- A. Trash must be bagged and secured in 13-gallon tall kitchen trash bags before being placed in the trash chute. Do not leave trash on the floor in the trash room or on the ground besides the dumpster or recycling bins.
- B. Trash may be deposited in the chute only between the hours of 7:00 a.m. and 9:00 p.m. daily.
- C. Boxes, breakable items including glass containers and bottles, and items too large or long to fit into proper trash bags must be carried to the dumpster or recycling bins located outside the service entrance.
- D. Boxes must be flattened and carried to the box recycling area next to the dumpsters. If boxes are not flattened, the city will not remove them from the premises.
- E. Cooking oils and grease should be collected in a disposable container and placed in the trash to avoid clogging kitchen drains.
- F. Drano and other products corrosive to pipes may not be used to unclog drains. Residents must call their own plumber to make repairs on their sinks, toilets, and drains.
- G. Residents may not leave furniture, mattresses or other large items they wish to discard in the loading dock area. Consult management for the proper procedure to have these items removed from your unit or arrange for private removal of the items to a dump/recycling site.

XVIII. GUESTS AND RENTERS

- A. Unaccompanied guests and all workers must *sign in* prior to being allowed into residential areas of the building each time they visit.
- B. If the security officer on duty has not been notified by a resident to allow guests to proceed to their unit, the security officer must call and speak with the resident when a guest arrives. Identification may be required of visitors. No visitor will be allowed to proceed to the residential floors without specific permission from the resident.

Middleborough Property Regime – Rules and Regulations

- C. Co-owners electing to rent their units must arrange for the transfer of unit keys, fobs, gate remotes, list of rental rules, and other rental accoutrements directly from the co-owner to the guest/renter. The security officer is not a hotel concierge and is prohibited from assisting renters by acting as an intermediary.
- D. All of the rules and regulations that are in effect for co-owners apply to guests and renters with regard to noise, odors, parking, and comportment.
- E. The use of the swimming pool is off limits for guests and renters who do not have a key fob registered in their name unless the co-owner is present in the pool area with the guest.
- F. All renters are prohibited from sub-letting their unit unless authorized by the co-owner.
- G. Accommodation rentals are prohibited, and residential units may only be used for residential purposes.

XIX. COMMUNICATIONS POLICY

- A. The management office uses an email hosting service to keep residents up-to-date on policy changes, amendments to the rules and regulations, emergency conditions in the building or on the property, and reminders of meetings. It is up to each resident to authorize the use of their email address in order to participate in this service. Authorization is given when the email address is included on the Directory Form each resident must fill out when moving into the building.
- B. Paper notices are posted on enclosed announcement boards outside the management office, at the mailboxes, and on the ground floor near the laundry room.
- C. Notice of the annual meeting and any special meetings will be mailed to the co-owner of record at the time of the mailing.

XX. MISCELLANEOUS

- A. Middleborough uses an exterminating company to treat on a quarterly basis the residential units, common areas, and commercial spaces in the building. The quarterly inspection and treatment are designed to prevent insect infestation. Residents must inform the management office if they wish to opt out of treatment, and if they wish to make alternate arrangements for a private company to treat their unit.

Middleborough Property Regime – Rules and Regulations

- B. Any pest infestation should be reported to management as quickly as possible so that the appropriate steps may be taken to limit the spread of the problem.
- C. Each resident must equip their unit with working smoke detectors as dictated by the Fire Marshall.
- D. Insurance: The Regime's insurance does not cover the interior surfaces, the contents and improvements, or liability issues for individual units. Residents are responsible for obtaining a condominium unit owners policy (also known as an HO-6 policy) for their respective units. This policy should include adequate property, personal property and liability coverage as determined by the unit owner's insurance agent in accordance with Article IX, Section G of the Middleborough Bylaws which states:

Insurance by Co-owners. Each Co-owner shall be responsible for obtaining such amounts of the following types of insurance as he deems necessary or desirable:

1. Hazard insurance on his Apartment for his own benefit;
2. Hazard insurance on the contents of his Apartment and on improvements made to his Apartment; and
3. Liability insurance covering accidents occurring within his Apartment

Any Co-owner who obtains hazard insurance on his Apartment for his benefit shall within thirty (30) day of obtaining the same deliver to the Board of Directors a certificate evidencing such policy of insurance.

- E. The Regime further urges owners to include in any coverage a loss provision that is not covered by the Master Policy.
- F. Special Note: Damage to any unit, including water, smoke, or odor, is the responsibility of the resident of the unit from which the problem originates. Any costs to repair damage caused by water, smoke, or odor must be paid by the resident of the unit where the source of the damage originates. For example, if a unit is damaged by water coming from another unit, the resident of the unit from which the problem originates is responsible for all the costs incurred to repair the damaged unit.

Middleborough Property Regime – Rules and Regulations

G. Packages accepted by the security officer on duty must be signed for when the resident picks up the package. Residents will be notified by phone of perishable deliveries so that they may pick up the package as quickly as possible after it is delivered. If a resident knows that a perishable delivery is expected, the resident should notify the security officer to be on the alert for the package.

H. Use of drones and other unmanned motorized aircraft is not allowed above the Middleborough HPR property or in close proximity of the building without prior written management consent. Violation of this rule will result in an assessment fine to the co-owner of the operator's residence.

I. The demand notice for the regime fee, also called the annual assessment, is made at the time the budget is approved by the co-owners at the annual meeting. Payment may be made annually, semi-annually, quarterly, or monthly. A separate demand letter is not required except for assessments that are in addition to the annual regime fee. The late fee and penalty structure associated with late payments is outlined in the Bylaws

J. Discharge of firearms, BB guns, air guns, and fireworks is not permitted on the premises.

XXI. SHORT TERM RENTALS

A. Pursuant to its authority granted by Article II of the Association Bylaws, the Board of Directors has concluded that the offering of rental of any (residential) unit for a term of less than thirty (30) days shall be deemed a non-residential use of the property and prohibited. For purposes of this resolution, "non-residential" shall be defined as the offering, advertising, using or renting of a unit as a lodging establishment for the purpose of collecting rent or remuneration for a period of thirty days or less. This prohibition specifically applies to AirBNBs, VRBOs or any similar service or advertising vehicle that markets rentals for less than thirty (30) days.

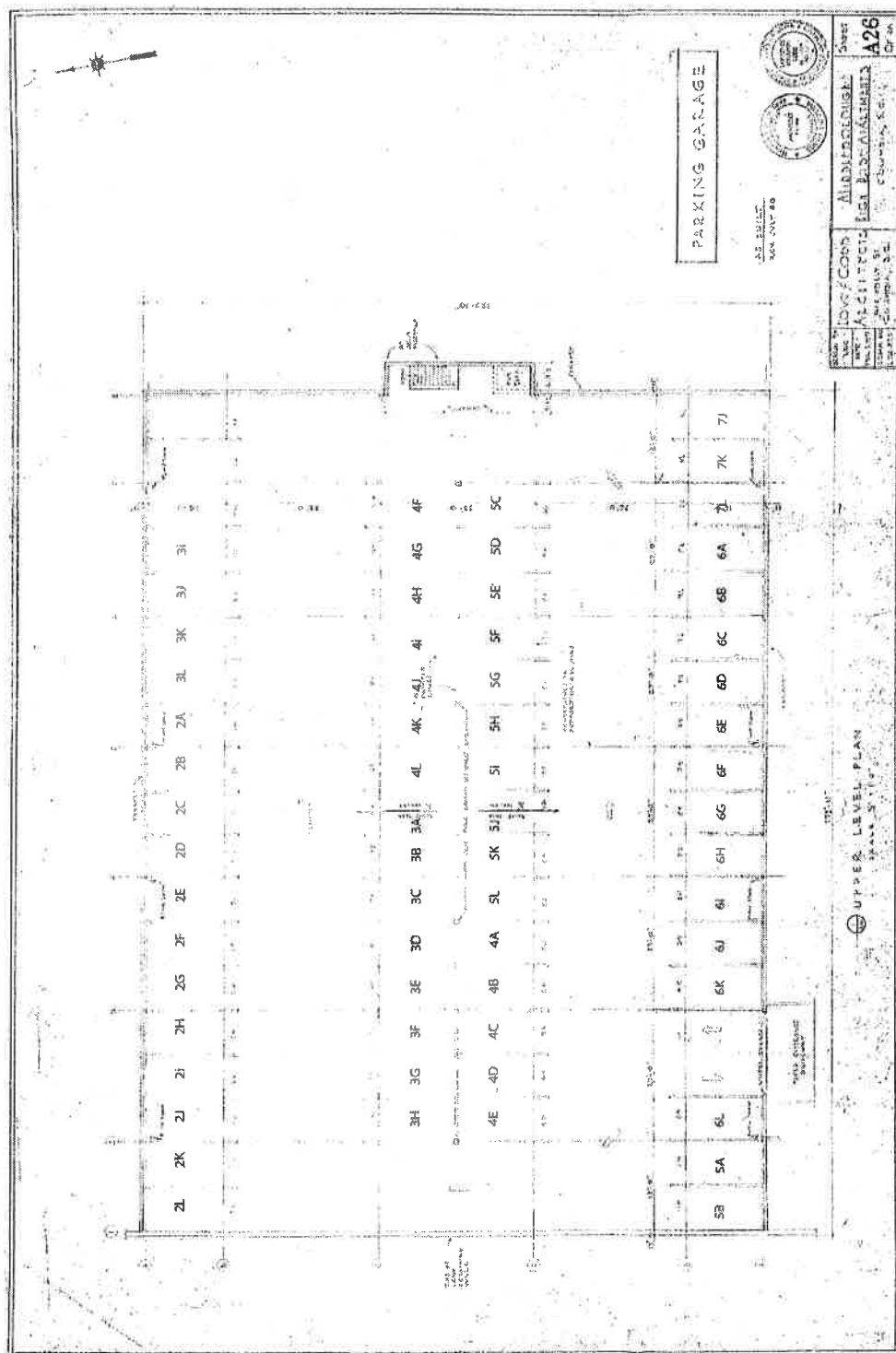
B. For each violation of this Regulation, a fine of \$10 per day as stipulated in the Bylaws shall be imposed.

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Middleborough Property Regime – Rules and Regulations

XXII. GARAGE SITE PLANS

A. Upper Level Plan



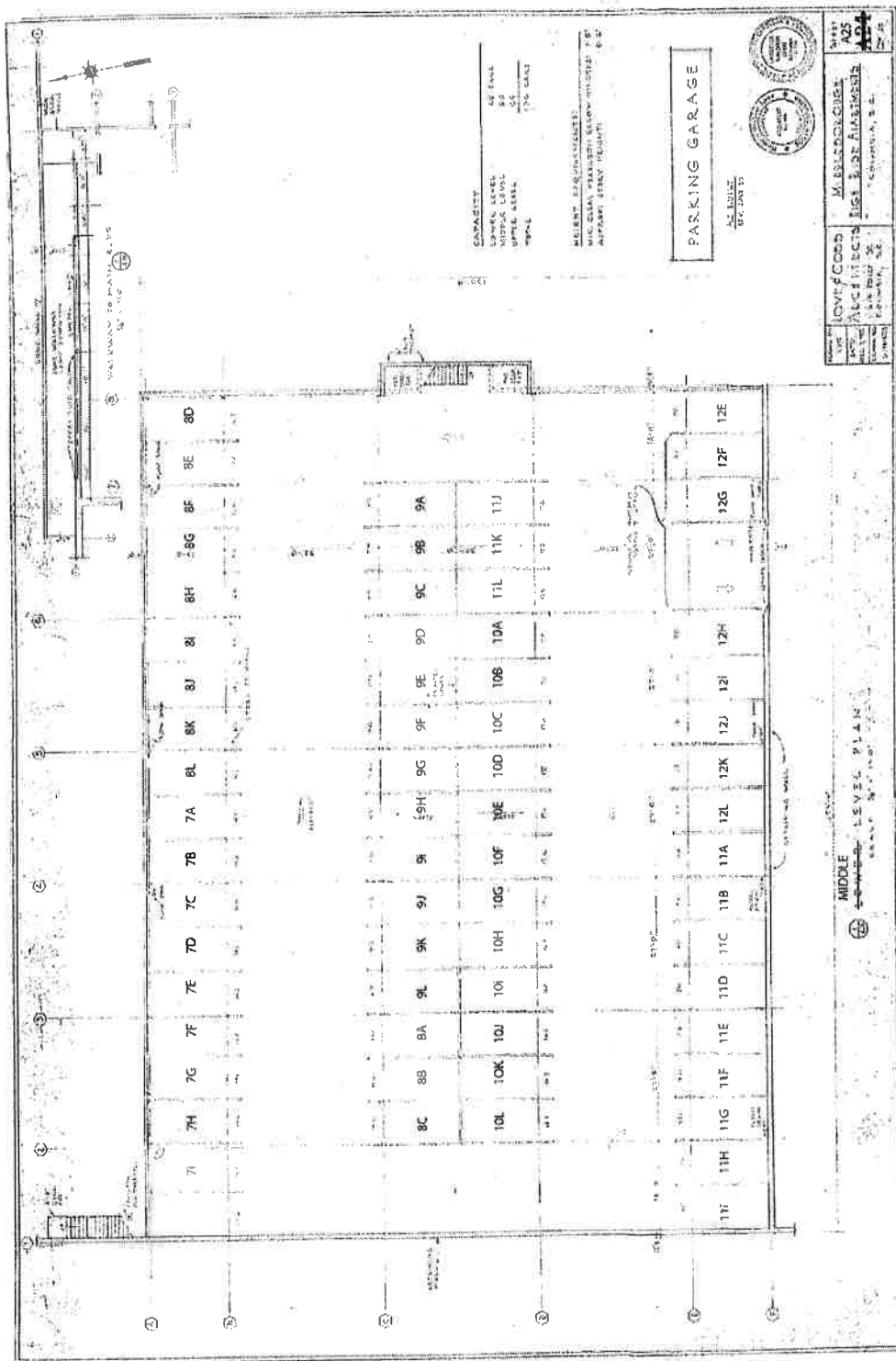
Revised January 7th, 2018

Page 18

ELECTRONICALLY FILED - 2019 Feb 28 4:11 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4001231

Middleborough Property Regime – Rules and Regulations

B. Middle Level Plan



C. Lower Level Plan



STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
	)	
Kevin O'Hara and Rebekah H.	)	
O'Hara,	)	
	)	
Plaintiff-Petitioner,	)	PLAINTIFF-PEITIONER'S ANSWER TO
	)	DEFENDANT-RESPONDENT'S
v.	)	COUNTERCLAIM
	)	
Middleborough Horizontal	)	
Property Regime,	)	
	)	
Defendant-Respondent.	)	
_____	)	

The Plaintiff-Petitioners Kevin O'Hara and Rebekah O'Hara ("the O'Haras") answer the Defendant-Respondent's, Middleborough Horizontal Property Regime ("Middleborough"), counterclaim herein as follows:

FOR A FIRST DEFENSE
(General Denial)

1. All allegations of Defendant-Respondent's Answer and Counterclaim not specifically admitted herein are specifically denied, and strict proof thereof is demanded.

FOR A SECOND DEFENSE
(Specific Denial)

2. Paragraphs 1 through 23 contain the Defendant-Respondent's responses and legal conclusions to which no response is required. To the extent a response is required, the O'Haras deny the allegations of Paragraphs 1 through 23. Any other allegations or characterizations are denied.
3. Plaintiff-Petitioners deny the allegations contained in Paragraph 24 of Defendant-Respondent's Counterclaim.

4. Paragraph 25 does not make any allegations against the O'Haras; to the extent that Paragraph 25 may be construed to have allegations against the O'Haras, the allegations of Paragraph 25 are denied. Any other allegations or characterizations are denied.
5. Paragraph 26 does not make any allegations against the O'Haras; to the extent that Paragraph 26 may be construed to have allegations against the O'Haras, the allegations of Paragraph 26 are denied. Any other allegations or characterizations are denied.
6. Paragraph 27 does not make any allegations against the O'Haras; to the extent that Paragraph 27 may be construed to have allegations against the O'Haras, the allegations of Paragraph 27 are denied. Any other allegations or characterizations are denied.
7. Paragraph 28 contains legal conclusions to which no response is required. To the extent a response is required, the allegations of Paragraph 28 are denied. Any other allegations or characterizations are denied.
8. Plaintiff-Petitioners admit the allegations contained in Paragraphs 29 and 30 of Defendant-Respondent's Answer and Counterclaim.
9. Plaintiff-Petitioners admit the allegations contained in Paragraph 31 to the extent the Defendant's administration is governed by the Bylaws. Plaintiff denies that the document contained in Defendant's Exhibit 3 is a true and correct copy of the binding Bylaws. Any other allegations or characterizations are denied.
10. Answering the allegations of Paragraph 32, Plaintiff-Petitioners crave reference to the Master Deed and S.C. Code Annotated § 27-31-170 and deny any allegations inconsistent therewith.
11. Answering the allegations of Paragraph 33, Plaintiff-Petitioners crave reference to the Master Deed and deny any allegations inconsistent therewith.

12. No response is required of Plaintiff-Petitioners to Paragraph 34 of Defendant-Respondent's Answer and Counterclaim. To the extent a response is required, the allegations of Paragraph 34 are denied and any changes to the Bylaws in contravention to the Master Deed are not binding.
13. Responding to the allegations of Paragraph 35, Plaintiff-Petitioners deny that Defendant-Respondent was authorized to enact the Regulations and any other allegations or characterizations are denied.
14. No response is required of Plaintiff-Petitioners to Paragraph 36 of Defendant-Respondent's Answer and Counterclaim. To the extent a response is required, the allegations of Paragraph 36 are denied and any changes to the Bylaws in contravention to the Master Deed are not binding.
15. Paragraph 37 contains legal conclusions to which no response is required. To the extent a response is required, the O'Haras deny the allegations of Paragraph 37. Any other allegations or characterizations are denied.
16. Paragraph 38 contains legal conclusions to which no response is required. To the extent a response is required, the O'Haras deny the allegations of Paragraph 38. Any other allegations or characterizations are denied.
17. Plaintiff-Petitioners deny the allegations of Paragraph 39.
18. Plaintiff-Petitioners deny the allegations of Paragraph 40.
19. Paragraph 41 contains Defendant-Respondent's characterizations of law, to which no response is required. To the extent a response is required, the O'Haras admit that the block quote appears to quote the language of S.C. Code Ann. § 45-2-50. Any other allegations or characterizations are denied.

20. Paragraph 42 contains Defendant-Respondent's characterizations of law, to which no response is required. To the extent a response is required, the O'Haras admit that the block quote appears to quote the language of South Carolina Municipal Code Chapter 11, Article II, Sec. 11-32, which speaks for itself. Any other allegations or characterizations are denied.
21. Plaintiff-Petitioners deny the allegations of Paragraph 43.
22. Paragraph 44 contains Defendant-Respondent's characterizations of Section 20-32 of the Tourism Development Fee Ordinance, to which no response is required. To the extent a response is required: Admit that Paragraph 44 appears to characterize Section 20-32 of the Tourism Development Fee Ordinance, which speaks for itself. Any other allegations or characterizations are denied.
23. Paragraph 45 contains Defendant-Respondent's characterizations of the South Carolina Municipal Code, to which no response is required. To the extent a response is required, the O'Haras admit that the block quote appears to quote the language of Chapter 11, Article X, Section 11-503, which speaks for itself. Any other allegations or characterizations are denied.
24. Paragraph 46 contains Defendant-Respondent's characterizations of the South Carolina Municipal Code, to which no response is required. To the extent a response is required, the O'Haras admit that the block quote appears to quote the language of Chapter 11, Article II, Section 11-31, which speaks for itself. Any other allegations or characterizations are denied.
25. Answering the allegations of Paragraph 47, the O'Haras are without sufficient information to admit or deny the allegations.

26. Paragraph 48 contains Defendant-Respondent's characterizations of the South Carolina Municipal Code, to which no response is required. To the extent a response is required, the O'Haras admit that the sentence appears to characterize a portion of the Business License Ordinance. Any other allegations or characterizations are denied.
27. Paragraph 49 contains Defendant-Respondent's characterizations of the South Carolina Municipal Code, to which no response is required. To the extent a response is required, the O'Haras admit that the block quote appears to quote the language of Section 11-32 of the Business Licensure Ordinance, which speaks for itself. Any other allegations or characterizations are denied.
28. Plaintiff-Petitioners deny the allegations of Paragraph 50.
29. Plaintiff-Petitioners deny the allegations of Paragraph 51.
30. Paragraphs 52 through 58 contains the Defendant-Respondent's responses and legal conclusions to which no response is required. To the extent a response is required, the O'Haras deny the allegations of Paragraphs 52 through 58.
31. Paragraph 59 contains legal conclusions to which no response is required. To the extent a response is required, the O'Haras admit the allegations of Paragraph 59 appear to characterize the law of restrictive covenants. Any other allegations or characterizations are denied.
32. Plaintiff-Petitioners deny the allegations of Paragraph 60.
33. Plaintiff-Petitioners deny the allegations of Paragraph 61.
34. Plaintiff-Petitioners deny the allegations of Paragraph 62.
35. No response is required of Plaintiff-Petitioners to Paragraph 63 of Defendant-Respondent's Answer and Counterclaim.

36. Paragraph 64 contains legal conclusions to which no response is required. To the extent a response is required, the O'Haras admit the allegations of Paragraph 64 appear to characterize the law of restrictive covenants. Any other allegations or characterizations are denied.
37. Plaintiff-Petitioners deny the allegations of Paragraphs 65.
38. Paragraphs 64 and 67 contain the Defendant-Respondent's responses and legal conclusions to which no response is required. To the extent a response is required, the O'Haras deny the allegations of Paragraphs 64 and 67. Any other allegations or characterizations are denied.
39. No response is required of Plaintiff-Petitioners to Paragraph 68 of Defendant-Respondent's Answer and Counterclaim.
40. The allegations contained in Paragraph 69 are admitted only to the extent that the Master Deed represents a valid agreement between the parties and any changes to the Bylaws in contravention to the Master Deed are not binding. Any other allegations or characterizations are denied.
41. Plaintiff-Petitioners deny the allegations contained in Paragraphs 70, 71, and 72 of Defendant-Respondent's Answer and Counterclaim.

FOR A THIRD DEFENSE

42. Defendant's counterclaims are barred, in whole or in part, by one or more of the doctrines of laches, estoppel, unclean hands, or waiver.

WHEREFORE, Petitioner prays for an Order restraining and enjoining Middleborough from prohibiting the O'Haras from renting their units on short-term leases and interfering with the

O'Haras tenants' rights to use the common areas in the same manner as all other co-owners or tenants and otherwise violating the Master Deed regarding any restrictions on the O'Haras' leases not set forth in the Master Deed. Pending a hearing on the merits of this Petition, Petitioner prays for a temporary restraining order and preliminary injunction restraining and enjoining Middleborough from unlawfully prohibiting the O'Haras and their tenants the full and lawful use of the unit and the common elements in any manner different from that of other co-owners or tenants as allowed by the Master Deed. The Petitioner further prays that this Court enter a declaratory judgment declaring that any restrictions or limitations on leases not specifically set forth in the Master Deed are not enforceable, and are a violation of law, including limitations as to the use of the common areas, the security guard, and other assets of the property in a manner different from that of all other co-owners and tenants, and that the O'Haras may continue to lease their property as short-term rentals and that their tenants may enjoy the property in the same manner as other residents.

BRUNER, POWELL, WALL & MULLINS, LLC

s/ Wesley D. Peel

Wesley D. Peel, S.C. Bar No.: 9283

Abigail A. Carson, S.C. Bar No.: 103150

P.O. Box 61110

Columbia, South Carolina 29260-1110

(803)252-7693

Attorneys for Plaintiff-Petitioner

Columbia, South Carolina

May 17, 2019

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
C/A No.: 2019-CP-40-01231

Kevin O'Hara and Rebekah H. O'Hara,

Plaintiffs-Petitioners,

v.

Middleborough Horizontal Property Regime,

Defendant-Respondent.

**AMENDED ANSWER,
COUNTERCLAIM, AND THIRD-
PARTY COMPLAINT**

Middleborough Horizontal Property Regime,

Third-Party Plaintiff,

v.

Krebone Enterprises, LLC,

Third-Party Defendant.

20022.8

Middleborough Horizontal Property Regime ("Defendant" or "Middleborough"), by and through its undersigned counsel, in its Answer to the Complaint and as a Counterclaim against Kevin O'Hara and Rebekah H. O'Hara ("O'Haras" or "Plaintiffs"), and a Third-Party Complaint against Krebone Enterprises, LLC ("Krebone" or "Third-Party Defendant"), alleges and states as follows:

FOR A FIRST DEFENSE

1. Defendant denies the allegations contained in each and every paragraph of Plaintiffs' Complaint not specifically admitted, qualified, or explained herein.

2. Answering the allegations contained in Paragraph One (1) of Plaintiffs' Complaint, Defendant admits Plaintiffs are the owners of condominium units 2J and 14G which are part of the Middleborough Horizontal Property Regime, which are within the city limits of

Columbia, South Carolina. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the Plaintiffs' residence in Richland County, South Carolina.

3. Defendant admits the allegations contained in Paragraphs Two (2), Three (3), Four (4), and Five (5) of Plaintiffs' Complaint.

4. Answering the allegations contained in Paragraph Six (6) of Plaintiffs' Complaint, Defendant admits Plaintiffs are the owners of condominium units 2J and 14G. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in said paragraph.

5. Defendant admits the allegations contained in Paragraph Seven (7) of Plaintiffs' Complaint upon information and belief.

6. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs Eight (8) and Nine (9) of Plaintiffs' Complaint.

7. Defendant admits the allegations contained in Paragraph Ten (10) of Plaintiffs' Complaint.

8. Answering the allegations contained in Paragraph Eleven (11) of Plaintiffs' Complaint, Defendant craves reference to the South Carolina Horizontal Property Act ("SCHPA") and denies any allegations inconsistent therewith.

9. Defendant denies the allegations contained in Paragraph Twelve (12) of Plaintiffs' Complaint. Answering further, Defendant craves reference to the Master Deed and denies any allegations inconsistent herewith.

10. Defendant denies the allegations contained in Paragraph Thirteen (13) of Plaintiffs' Complaint as stated. Defendant admits Plaintiffs have leased condominium unit 2J over Defendant's objection and seek to do the same with unit 14G.

11. Answering the allegations contained in Paragraph Fourteen (14) of Plaintiffs' Complaint, Defendant craves reference to the Master Deed and the SCHPA and denies any allegations inconsistent therewith.

12. Answering the allegations contained in Paragraph Fifteen (15) of Plaintiffs' Complaint, Defendant craves reference to the July 14, 2016 letter and denies any allegations inconsistent therewith.

13. Defendant denies the allegations contained in Paragraph Sixteen (16) of Plaintiffs' Complaint as stated. Defendant admits Plaintiffs' attorney wrote a response to the letter referenced in the preceding paragraph; however, Defendant denies that it declined an invitation to meet with Plaintiffs.

14. Defendant denies the allegations contained in Paragraph Seventeen (17) of Plaintiffs' Complaint as stated.

15. Defendant admits the allegations contained in Paragraph Eighteen (18) of Plaintiffs' Complaint but denies that the revision constituted a change as it merely clarified existing restrictions against commercial use.

16. The allegations contained in Paragraph Nineteen (19), including subparts (i) through (v), of Plaintiffs' Complaint merely state legal conclusions and therefore, no response is required. To the extent a response is required, the allegations are denied.

17. Defendant admits the allegations contained in Paragraph Twenty (20) of Plaintiffs' Complaint.

18. Defendant denies the allegations contained in Paragraph Twenty-One (21) of Plaintiffs' Complaint.

19. The allegations contained in Paragraph Twenty-Two (22) of Plaintiffs' Complaint merely state a legal conclusion that does not require a response from Defendant. To the extent a response is required, the allegations are denied.

20. Defendant admits so much of Paragraph Twenty-Three (23) of Plaintiffs' Complaint as may be construed to allege that the use of condominium units for non-residential purposes is prohibited and will continue to be prohibited.

21. Defendant admits so much of Paragraph Twenty-Four (24) of Plaintiffs' Complaint as may be construed to allege that the use of the common areas, including the swimming pool, is limited to residents and their guests, according to a long-standing policy adopted by Defendant.

22. The allegations contained in Paragraphs Twenty-Five (25), Twenty-Six (26), Twenty-Seven (27), Twenty-Eight (28), and Twenty-Nine (29) of Plaintiffs' Complaint merely state legal conclusions and therefore, no response is required. To the extent a response is required, these allegations are denied. Answering further, Defendant is informed and believes that any injunction would be detrimental to Defendant and would cause irreparable harm to Defendant and Middleborough residents.

23. The allegations contained in Paragraphs Thirty (30) and Thirty-One (31) of Plaintiffs' Complaint merely state legal conclusions and therefore, no response is required. To the extent a response is required, these allegations are denied.

FOR A SECOND DEFENSE

24. Plaintiffs' Complaint fails to state facts sufficient to constitute a cause of action and should be dismissed pursuant to Rule 12(b)(6), SCRCP.

FOR A THIRD DEFENSE

25. Defendant will show that at all times relevant to this action, it acted in good faith and without malice in its actions and in the best interest of the regime and its community.

FOR A FOURTH DEFENSE

26. Defendant reserves the right to raise additional affirmative defenses based upon addition evidence that may be discovered while this case is pending.

FOR A FIFTH DEFENSE
AND BY WAY OF A COUNTERCLAIM AS TO PLAINTIFFS AND THIRD-PARTY
COMPLAINT AS TO THIRD-PARTY DEFENDANT
(Declaratory Judgment)

27. Defendant hereby realleges and incorporates herein by reference the preceding allegations in its Answer.

28. This Counterclaim and Third-Party Complaint is brought pursuant to the South Carolina Declaratory Judgment Act, S.C. Code Ann. § 15-53-10, *et seq.* (Rev. 2005), and seeks a declaration that Plaintiffs' and Third-Party Defendants' short-term rental of condominium units 2J and 14G for consideration constitutes a non-residential, commercial use of the units in violation of Middleborough's Master Deed and Bylaws.

29. Defendant is a horizontal property regime created under a Master Deed, executed October 14, 1981 and recorded November 12, 1981 in Book 593 at Page 92, pursuant to the SCHPA. The Middleborough Property consists of two phases: Phase 1 under the Master Deed consists of 192 residential apartments, including Plaintiff's condominium units 2J and 14G. A true and correct copy of the Master Deed is attached hereto as **Exhibit 1**.

30. Phase 2 was created by amendment to the Master Deed dated December 21, 1984, adding the first floor and basement as residential rental space and allowing use of those areas as residential rental space or as commercial or office space. A true and correct copy of the Amendment to the Master Deed is attached hereto as **Exhibit 2**.

31. Pursuant to Article II(C) of the Master Deed, Defendant's administration is governed by the Bylaws. A true and correct copy of the Bylaws is attached hereto as **Exhibit 3**.

32. Third-Party Defendant Krebone Enterprises, LLC, upon information and belief, is a limited liability company organized and existing pursuant to the laws of the State of South Carolina, conducting business in Richland County, South Carolina.

33. Plaintiff Kevin O'Hara is the registered agent for Third-Party Defendant Krebone Enterprises, LLC, as documented by the South Carolina Secretary of State website, attached hereto as **Exhibit 5**.

34. **Exhibit 5** also lists Plaintiff Kevin O'Hara's as being located in Charleston, South Carolina, rather than Middleborough or Columbia, South Carolina.

35. Plaintiff Kevin O'Hara also lists himself as the President of Krebone Enterprises, LLC which he describes as "Investing in and managing a portfolio of real estate assets focused on short-term residential rental markets in North Carolina, Georgia, and South Carolina" on his personal LinkedIn page, attached hereto as **Exhibit 6**.

36. The website for Krebone Enterprises, LLC [www.kreboneenterprises.com], screenshots of which are attached hereto as **Exhibit 7**, lists Unit 2J for rent and facilitates the rental thereof for temporary stays.

37. Article X(B) of the Master Deed and SC Code §27-31-170 provide each Co-owner shall comply strictly with the Bylaws and with the administrative rules and regulations adopted pursuant thereto.

38. Article XB of the Master Deed further provides failure to comply with any of the same shall be ground for a civil action to recover any sums due for damages or injunctive relief, or both, maintainable by the Manager of the Board of Directors.

39. Article XI of the Bylaws mandates that "Apartments in Phase 1 shall be used **only as residences**" (emphasis added).

40. In accordance with the authority granted to it under the Master Deed and Bylaws, on January 7, 2019, the Board of Directors enacted Regulations pertaining to the security of the Property, key fobs, vehicle parking, common areas, guests and renters, and short-term rentals. A true and correct copy of the Regulations is attached hereto as **Exhibit 4**.

41. With respect to short-term rentals, Regulation XXI(A) provides:

Pursuant to the its authority granted by Article II of the Associations Bylaws, the Board of Directors has concluded that the offering of rental of any (residential) unit for a term of less than thirty (30) days shall be deemed a non-residential use of the property and prohibited. For purposes of this resolution, "non-residential" shall be defined as the offering, advertising, using or renting of a unit as a lodging establishment for the purpose of collecting rent or remuneration for a period of thirty days or less. This prohibition specifically applies to AirBNBs, VRBOs or any similar service or advertising vehicle that markets rentals for less than thirty (30) days.

42. Notwithstanding, Defendant would show that a "residential" use, as required in the Master Deed and Bylaws for Phase 1 units, does not encompass the short-term rentals, or rentals of thirty days or less, being conducted by Plaintiffs and Third-Party Defendant.

43. Defendant is informed that Plaintiffs' and Third-Party Defendant's use of the condominium units is rather a commercial/business purpose, which is prohibited in Phase 1 units, as a commercial place of tourism and public accommodations.

44. Plaintiffs and Third-Party Defendant are engaged in a commercial activity under both State and local law.

45. Plaintiffs and Third-Party Defendant are "innkeepers" of a "lodging establishment" under South Carolina's Lodging Establishment Act as defined by S.C. Code § 45-2-20:

(1) "Inkeeper" means the owner, operator, manager, or keeper of a lodging establishment;

(2) "Lodging establishment" means a hotel, motel, villa, condominium, inn, tourist court tourist camp, campground, bed and breakfast, residence, or any place in which rooms, lodging, or sleeping accommodations are furnished to transients for a consideration...

46. South Carolina's Lodging Establishment Act further provides at S.C. Code § 45-2-50 as follows:

The innkeeper of a lodging establishment shall keep for at least five years a guest register showing the name, residence, date of arrival, and departure of hotel guests. Every guest shall register, and the registering guest may be required by the innkeeper to produce a valid driver's

license, or other identification satisfactory to the innkeeper, containing a photograph of the guest and setting forth the name and residence of the guest ... The guest register may be kept within the meaning of this section when reproduced on any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which actually reproduces the original record.

47. Columbia, South Carolina Municipal Code Chapter 11, Article II, Sec. 11-32 defines a “business” as follows:

Business means a calling, occupation, profession or activity engaged in with the object of gain, benefit or advantage, either directly or indirectly...

48. Plaintiffs and Third-Party Defendant are engaged in the tourism business operating a place of accommodation as defined by Sec. 20-31 of the Columbia, South Carolina Municipal Code Chapter 20, Article II (“Tourism Development Fee Ordinance”) as follows:

Accommodation means any room, excluding meeting and conference rooms, campground paces, recreational vehicle spaces, lodgings, or sleeping accommodations furnishes to transients by any hotel, motel, inn, condominium, bed and breakfast, residence or any other place in which rooms, lodgings or sleeping accommodations are furnished for consideration with in the city. The gross proceeds received from the lease or rental of sleeping accommodations supplied to the same person for a period of 30 continuous days are not considered proceeds from transients.

49. Furthermore, Sec. 20-32 of the Tourism Development Fee Ordinance provides a uniform fee equal to three percent is imposed on the gross proceeds derived from the rental of any accommodations within the city.

50. Columbia, South Carolina Municipal Code Chapter 11, Article X, Section 11-503 also defines a “place of public accommodation” as follows:

Place of public accommodation means any place which serves the public and requires a license or permit issued by the State of South Carolina, its agencies or the City of Columbia to operate, including, but not limited to:

- (1) *Any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence...*

51. Sec. 11-31 of Columbia, South Carolina, Municipal Code Chapter 11, Art. II (“Business License Ordinance”), provides, amongst other things, the following:

Every person engaged or intending to engage in any calling, business, occupation, or profession ... whether or not it is listed in the rate classification index portion of this article, in whole or in part within the limits of the city, is required to pay an annual license fee and obtain a business license as provided in this article.

52. Defendant is informed the City of Columbia in fact requires a business license to rent property through Airbnb and like services.

53. Section 11-49 of the Business License Ordinance also provides business license rate schedules for both boardinghouses/roominghouses and hotels/motels.

54. Section 11-32 of the Business License Ordinance provides further, amongst other things, the following:

Boardinghouse and roominghouse mean any dwelling, other than a hotel or motel, in which more than three persons who are not members of the owner’s or operator’s family are housed or lodged in rooms used or intended to be used for living and sleeping but not for cooking or eating purposes, for compensation, with or without meals being provided. Any dwelling in which such accommodations are offered in ten or more rooms shall be considered to be a hotel or motel.

55. Plaintiffs’ and Third-Party Defendant’s business of public accommodations foreseeably subjects Defendant to the Americans with Disabilities Act (“ADA”) under its Title III concerning Public Accommodations, and would thereby subject Defendant and its members to tremendous expense.

56. Section 36.104 of the ADA, “Definitions,” provides, amongst other things the following:

Place of public accommodation means a facility operated by a private entity whose operations affect commerce and fall within at least one of the following categories –

(1) Place of lodging, except for an establishment located within a facility that contains not more than five rooms for rent or hire and that actually is occupied by the proprietor of the

establishment as the residence of the proprietor. For the purposes of this part, a facility is a “place of lodging if it is –

- i. An inn, hotel, or motel; or*
- ii. A facility that –*
 - A. Provides guest rooms for sleeping for stays that primarily are short-term in nature (generally 30 days or less) where the occupant does not have the right to return to a specific room or unit after the conclusion of his or her stay; and*
 - B. Provides guest rooms under conditions and with amenities similar to a hotel, motel, or inn, including the following –*
 - 1. On- or off-site management and reservations service ...*

Public accommodation means a private entity that owns, leases (or leases to), or operates a place of public accommodation.

57. Section 36.201 of the ADA, “General,” provides, amongst other things, the following:

Landlord and tenant responsibilities. Both the landlord who owns the building that houses a place of public accommodation and the tenant who owns or operates the place of public accommodation are public accommodations subject to the requirements of this part...

58. Defendant is informed that Plaintiffs and Third-Party Defendant are in the business of offering accommodations to transient users, and in addition to renting units which are part of the Middleborough Horizontal Property Regime, also rent additional properties in Columbia through Airbnb and/or other similar services.

59. Residents of Middleborough have reported obnoxious and offensive behaviors from customers of Plaintiffs’ and Third-Party Defendant’s commercial rental of public accommodations.

60. Defendant asks that this Court inquire into the matter and issue an order declaring the rights and responsibilities of the parties, and specifically declaring that Plaintiffs’ and Third-Party Defendant’s short-term rental of the condominium units as a commercial place of public

accommodations constitutes a commercial use, and this use violates the governing documents' restriction against the non-residential use of Phase I condominium units.

FOR A SECOND CAUSE OF ACTION
(Injunctive Relief)

61. Defendant incorporates all previous allegations as if repeated herein verbatim.

62. Defendant will suffer irreparable harm if the covenants are not upheld as to the prohibition against the use of the Phase 1 units for anything other than residential use.

63. The short-term leasing of units 2J and 14G constitutes a commercial use rather than a residential use of the property.

64. Plaintiffs' and Third-Party Defendant's use of the condominium units for commercial purposes is plainly evidenced by their multiple listings throughout Columbia, the City of Columbia's business licensing provisions applicable to the units and provisions applicable to places of public accommodation, the City of Columbia's requirement for a business license to rent property within city limits through Airbnb and similar services, and South Carolina statutory provisions concerning innkeepers and places of public accommodation.

65. Defendant has no adequate remedy at law and damages would be unsatisfactory in remedying the consistent and patterned violations.

FOR A THIRD CAUSE OF ACTION
(Breach of Covenants)

66. Defendant incorporates all previous allegations as if repeated herein verbatim.

67. Restrictive covenants are considered voluntary contracts between the parties.

68. Pursuant to the Master Deed and Bylaws, Plaintiffs and Third-Party Defendant have breached the covenants contained therein by continuously and repeatedly making commercial use of their units.

69. Residents of Middleborough have reported obnoxious and offensive behaviors from customers of Plaintiffs' and Third-Party Defendant's commercial rental.

70. Plaintiffs' and Third-Party Defendant's breach has caused Defendant to incur damages including, but not limited to, loss of property value, diminished aesthetics and a lack of harmony in the community, and foreseeably subjects Defendant to the ADA and tremendous expenses therefrom.

FOR A FOURTH CAUSE OF ACTION
(Enforcement of Restrictive Covenants)

71. Defendant incorporates all previous allegations as if repeated herein verbatim.

72. Restrictive covenants are considered voluntary contracts between the parties.

73. Pursuant to the Master Deed and Bylaws, Plaintiffs and Third-Party Defendant have breached the covenants contained therein by continuously and repeatedly making commercial use of their units.

74. Defendant is entitled to enforcement of the covenants at equity.

75. The balance of equities favors enforcing the covenant.

FOR A FIFTH CAUSE OF ACTION
(Specific Performance)

76. Defendant incorporates all previous allegations as if repeated herein verbatim.

77. The Master Deed and Bylaws represents a valid agreement between the parties.

78. Defendant has performed in all aspects required by the Master Deed and Bylaws.

79. Plaintiffs and Third-Party Defendant have failed to perform as required by the Master Deed and Bylaws by continuously or repeatedly making commercial use of their units.

80. Defendant is able and willing to perform its obligations under the Master Deed and Bylaws.

WHEREFORE, having fully set forth its Answer and Counterclaim, Defendant prays this Honorable Court for judgement as follows:

- a. For a Declaratory Judgment that Plaintiffs and Third-Party Defendant are violating the Master Deed Bylaw's restriction that apartments in Phase 1 be used only as residences;

- b. An order enjoining Plaintiffs and Third-Party Defendant to cease the short-term leasing of their units which constitutes a commercial, non-residential use of the property;
- c. For an Order enforcing the restrictive covenants;
- d. For an Order requiring Plaintiffs and Third-Party Defendant to specifically perform under the provisions of the governing documents;
- e. Actual and consequential damages and the taxable costs of this action;
- f. For such other and further relief as this Honorable Court may deem just and proper.

Respectfully Submitted,

s/ Kirby D. Shealy III

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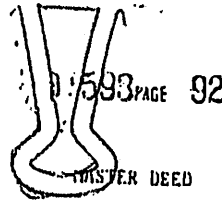
Attorneys for Defendant

May 30, 2019

Columbia, South Carolina

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)



MASTER DEED
MIDDLEBOROUGH

HORIZONTAL PROPERTY REGIME
(An Expandable Regime)

THIS MASTER DEED made by Middleborough, A Limited Partnership ("Grantor"), pursuant to the Horizontal Property Act of South Carolina (the "Act") for the purpose of creating a horizontal property regime and establishing certain easements, covenants and restrictions to run with the land,

WITNESSETH:

ARTICLE I

THE PROPERTY

A. Property. As used herein, the term "Property" means and includes the land hereinafter identified and all improvements and structures now existing or hereafter placed thereon by Grantor and all easements, rights and appurtenances belonging thereto, excluding only those portions of the land and improvements reserved to Grantor for additional Phases II, III and IV.

B. Land. The land ("Land") which is subject to this Master Deed is that certain tract or parcel described in Exhibit "A" attached hereto and consisting of 5.28 acres, excluding only those portions of the Land and Property reserved to Grantor for additional Phases II, III and IV. The Land is owned by Grantor in fee simple and is more particularly described and delineated on the plat recorded in Plat Book X at page 2075 in the office of the R. M. C. for Richland County, South Carolina.

C. Phase I Apartments. Grantor has constructed as part of the Property an eighteen (18) story building covering a total ground area (at grade) of 14,870 square feet and containing a total of 192 residential apartments ("Apartments") and a three (3) deck parking garage covering a total ground area (at grade) of 22,685 square feet, all as shown on the plans and specifications titled "Middleborough High Rise Apartments Federal Housing Administration Project No. 054-00084 SEC. 207 prepared by Love & Cobb Architects and Reed, Fleming & Associates, Inc., Engineers, Columbia, S.C. dated April 3, 1972, as revised, which plans and specifications are incorporated herein by reference. The Apartments consist of 6 types as follows:

Type A. A one-bedroom apartment containing 800 square feet of interior area;

Type B. A two-bedroom apartment containing 1010 square feet of interior area;

Type C. A two-bedroom apartment containing 1050 square feet of interior area;

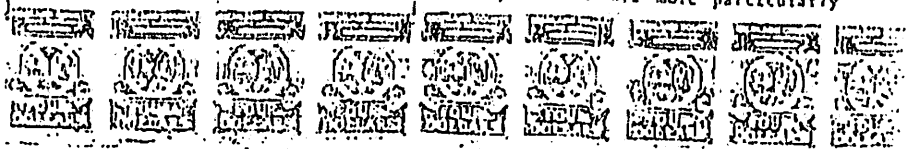
Type D. A two-bedroom apartment containing 1100 square feet of interior area;

Type E. A two-bedroom apartment containing 1125-1160 square feet of interior area; and

Type F. A three-bedroom apartment containing 1375 square feet of interior area.

Certain types of Apartments exist in two configurations, each of which is the approximate mirror image of the other and Type E Apartments contain either 1125 or 1160 square feet as noted. The Apartments are more particularly

0 593 page 92



ELECTRONICALLY FILED - 2019 Feb 28 4:11 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4001231

98
PAGE 98

described as to number, location, type and configuration on the Plot Plan, the floor plans (the "Floor Plans") of the Apartments filed for record herewith as Exhibits "B-1" through "B-19" attached hereto. Each Apartment encompasses and includes all that portion of the building designated on the Floor Plans as an Apartment and consisting of all living and storage space bounded by the upper surface of the floor slab, by the unexposed surfaces of the drywall or plastering forming interior walls and ceilings, and by the exterior surfaces of windows and window frames and of exterior doors and the door frames; and all flooring, floor covering, tile, plaster, wall board, paint, wall covering, doors, door frames, windows, window frames, cabinets, fixtures, appliances and other building materials within the space so bounded. Each Apartment also includes the heating, air conditioning and ventilating equipment and the ducting, electrical wiring and water and sewer pipes serving such Apartment exclusively, regardless of where situated. The balcony or balconies adjacent to and immediately accessible from an Apartment and screens covering the doors or windows of an Apartment are also part of the Apartment.

D. Common Elements. All portions of the Property not encompassed and included within the various Apartments are part of the common elements (the "Common Elements") of the Property. The Common Elements consist of General Common Elements as hereinafter described.

E. General Common Elements. The General Common Elements include the following:

1. The Land;
2. The foundation, main walls, roof (as now existing or as replaced upon completion and merger of Phase III), halls, reception area, fire stairs, and entrance and exit or communication ways of the building;
3. The compartments or installations of central services such as power, light, refrigeration, reservoirs, water tanks and pumps and the like;
4. The elevators and, in general, all devices or installations existing for common use; and
5. All other elements of the Property rationally of common use or necessary to its existence, upkeep and safety.

F. Values. The value of the Property is \$12,075,200.00, and the value of each individual Apartment is as shown on Exhibit C attached hereto and hereby made a part hereof. The values shown on Exhibit C are fixed for the sole purpose of complying with the Horizontal Property Act and irrespective of the actual values, and shall not prevent Grantor or each Co-owner from fixing a different circumstantial value to his Apartment in all types of acts and contracts.

G. Ownership of Common Elements. Ownership of the Common Elements is apportioned among and appurtenant to the individual Apartments according to the percentages set forth on Exhibit C. The percentage of the undivided interest in the Common Elements shall not be separated from the Apartment to which it appertains and shall be deemed to be conveyed or encumbered with the Apartment even though such interest is not expressly mentioned or described in the deed or other instrument of conveyance. Said percentage also shall not be altered without the acquiescence of all the Co-owners except as provided in Article V, upon the addition of Phases II, III and/or IV or any of them.

H. Name. The name by which the horizontal property regime shall be known is "Hiddleborough Horizontal Property Regime" (hereinafter sometimes called "Regime").

ARTICLE II

THE COUNCIL

A. Members. Every Co-owner, as hereinafter defined, shall be a member of and constitute the council of Co-owners (the "Council"), an unincorporated association which shall be managed by a board of administration (the "Board of Directors") elected by and from the Co-owners and by a professional management company (the "Manager") if the Board of Directors or the Council so elect.

D. Co-owner. As used herein, the term "Co-owner" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns an Apartment.

C. Bylaws. The Council and the administration of the Property shall be governed by the bylaws (the "Bylaws") annexed hereto as Exhibit D. The Bylaws may be modified or amended only in the manner set forth in Article IX hereof.

U. Voting. On all matters relating to the Council or to the Property upon which a vote of the Co-owners is conducted, the Co-owners shall vote in proportion to their respective percentage interests in the Common Elements so that there shall be appurtenant to each type of Apartment one vote (or percentage thereof) equal to the percentage ownership attributable to such Apartment. ~~The total number of votes appurtenant to all Apartments is 100. The affirmative vote of a majority of the Co-owners, as hereinafter defined, shall be required to adopt decisions. All votes attributable to a single Apartment must be cast together and may not be split.~~

E. Majority of the Co-owners. Whenever used in this Master Deed or the Bylaws, the term "Majority of the Co-owners" means Co-owners entitled to cast a total of more than 50 votes.

F. Interim Rights of Grantor. Notwithstanding anything to the contrary in this Master Deed or the Bylaws, until 120 days after Grantor or its successor in interest owns fewer than twenty-five (25 %) percent of the Apartments of Phase I or until the passage of three (3) years from the date of recording this Master Deed, whichever first occurs, there shall be not more than three (3) directors and Grantor or its successors shall be entitled to designate two (2) of such directors, and any successor to such director, all as is provided in the Bylaws.

ARTICLE III

COMMON EXPENSES

A. Liability of Co-owners. The Co-owners of the Apartments are bound to contribute in proportion to their respective interests in the Common Elements toward the following expenses ("Common Expenses"):

1. Expenses of administration and of maintenance and repair of the General Common Elements and, in proper cases, of the Limited Common Elements; and

2. Any other expense lawfully agreed upon by the Council.

The liability of each Co-owner for the Common Expenses shall be limited to the amounts for which he is assessed from time to time in accordance with the Horizontal Property Act, this Master Deed and the Bylaws. No Co-owner may exempt himself from contributing toward the Common Expenses by waiver of the use or enjoyment of the Common Elements or by abandonment of his Apartment. Monthly assessments shall commence and be due and payable upon the recording of this Master Deed.

B. Liability of Purchaser. The purchaser of an Apartment (other than a purchaser at a foreclosure sale as described below in paragraph E) shall be jointly and severally liable with the seller pursuant to paragraph A above up to the time of the conveyance, without prejudice to the purchaser's right to recover from the seller the amounts paid by the purchaser as such joint debtor. The Council shall provide for the issuance and shall issue to any purchaser, upon his request, a statement of such amounts due by the seller of any Apartment, and the purchaser's liability under this paragraph shall be limited to the amount as set forth in the statement.

C. Sale of Apartment. Upon the sale or conveyance of an Apartment, all unpaid assessments against a Co-owner for his pro rata share of the Common Expenses shall first be paid out of the sales price or by the acquirer in preference over any other assessments or charges of whatever nature except the following:

1. Assessments, liens and charges for taxes past due and unpaid on the Apartment; and

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2. Payments due under mortgage instruments or encumbrances duly recorded prior to the time the assessments for Common Expenses became payable.

D. Lien on Apartment. All sums assessed by the Manager or the Board of Directors for the share of the Common Expenses chargeable to any Apartment shall constitute a lien on such Apartment prior and superior to all other liens except only (i) tax liens on the Apartment in favor of any assessing unit, and (ii) mortgage and other lien encumbering the Apartment, duly recorded prior to the time the assessment for such Common Expenses became payable. Such lien may be foreclosed by suit by the Manager or the Board of Directors, acting on behalf of the Council, in like manner as a mortgage of real property. In any such foreclosure the Co-owner of the Apartment shall be required to pay a reasonable rental for the Apartment after the commencement of the foreclosure action, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same. The Manager or the Board of Directors, acting on behalf of the Council, shall have power to bid in the Apartment at any foreclosure sale and to acquire, hold, lease, mortgage, encumber and convey the same. Suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or waiving the lien securing the same.

E. Foreclosure Purchaser. Where the mortgagee of any mortgage of record or other purchaser of an Apartment obtains title to the Apartment as a result of foreclosure of such mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of the Common Expenses or assessments by the Co-owners chargeable to such Apartment accruing after the date of recording such mortgage but prior to the acquisition of title to such Apartment by such acquirer. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all of the Co-owners, including such acquirer, his successors and assigns.

F. Records. The Manager of the Board of Directors shall keep, or cause to be kept, a book with a detailed account, in chronological order, of the receipts and expenditures affecting the Property and its administration and specifying the maintenance and repair expenses of the Common Elements and any other expenses incurred. Both the book and the vouchers accrediting the entries made thereupon shall be available for examination by all the Co-owners or mortgage holder or insurer at convenient hours on working days that shall be set and announced for general knowledge.

ARTICLE IV

EASEMENTS, COVENANTS AND RESTRICTIONS

A. Use of Property. Each Co-owner shall be entitled to the exclusive ownership and possession of his Apartment and may use the Common Elements in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of other Co-owners.

B. Utility Easements. There shall be appurtenant to each Apartment a non-exclusive easement for use of all pipes, wires, cables, conduits, utility lines, flues and ducts serving such Apartment and situated in any other Apartment. Each Apartment shall be subject to an easement in favor of other Apartments for use of all pipes, wires, cables, conduits, utility lines, flues and ducts situated in such Apartments and serving such other Apartments.

C. Encroachments. If any portion of the Common Elements now encroaches upon any Apartment, or if any Apartment now encroaches upon any other Apartment or upon any portion of the Common Elements, or if any such encroachment shall occur hereafter as a result of (i) settling of an Apartment or Apartments; (ii) repair, alteration or reconstruction of the Common Elements made by or with the consent of the Council; (iii) repair or reconstruction of an Apartment or Apartments following damage by fire or other casualty; or (iv) 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 Horizontal Property Act.

10 593 PAGE 95

D. Right of Access. The Council shall have the irrevocable right, to be exercised by the Manager or the Board of Directors, to have access to each Apartment from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Apartment.

E. Maintenance of Common Elements. The necessary work of maintenance, repair and replacement of the Common Elements and the making of any additions or improvements thereto shall be carried out only as provided in the Horizontal Property Act, this Master Deed and the Bylaws.

F. Prohibited Work. No Co-owner shall do any work which would jeopardize the soundness or safety of the Property, reduce the value thereof or impair any easement or hereditament without in every such case unanimous consent of all other Co-owners affected being first obtained.

G. Partition. The Common Elements shall remain undivided and shall not be the object of an action for partition or division of the co-ownership. Any covenant to the contrary shall be void.

ARTICLE V

MERGER OF ADDITIONAL PHASES

A. Additional Property. This is an expandable project. Portions of the grounds, the first floor, the basement and the roof of the building containing the Apartments hereby subjected to the Act, which are identified in Exhibit A as "Reserved to Grantor For Future Use" are excluded from the Middleborough Horizontal Property Regime by Grantor. In the future Grantor may wish to expand this Regime by adding such additional property (modified or constructed as additional apartments, commercial space or penthouses) in one or more Phases as hereinafter described. The maximum number of additional units which may be annexed to the Regime established hereby shall not exceed thirty-six (36) apartment units or commercial units in the aggregate on the first floor and basement (Phase II); twelve (12) penthouse apartment units constructed on the roof of the building (Phase III); and, additional construction of a building or buildings containing not more than thirty-six (36) units on the reserved forty-two one hundredths (.42) acre located at the southwestern corner of the Land (Phase IV). The aggregate total maximum square footage for Phases II, III and IV, which Grantor may add to this Regime shall not exceed 85,771 square feet and the aggregate total value of the additional property (determined solely for purposes of complying with the Act) shall not exceed \$5,282,900. Any additional apartment or commercial units shall be constructed of equal or superior quality to those subjected to this Regime in this Phase I and shall be substantially completed prior to annexation to this Phase I.

B. Amendments to Master Deed. In the event Grantor, in its sole discretion, elects to proceed to enlarge this Regime by adding Phase II, Phase III or Phase IV, or any of them, in any order, or parts of any of them, in any order, Grantor shall execute an amendment or amendments to this Master Deed which shall be filed for record in the R.M.C. Office for Richland County, South Carolina not later than seven (7) years from the date of recording this Master Deed. Any such amendment or amendments shall fully describe the property being added to this Regime and submit such property to all of the provisions of this Master Deed and exhibits attached hereto, as amended. Such amendment or amendments expanding this Regime, as aforesaid, may be accomplished unilaterally by Grantor without the approval or consent of any Co-owner, or mortgagee of any Co-owner, of the Regime as constituted at the time of such amendment. Upon exercise of any such option to expand, as aforesaid, the provisions of this Master Deed shall then be understood and construed as embracing Phase I property and such property as may be described in such amendment, together with all improvements constructed thereon.

C. Reversion of Additional Property to Regime. Should the expansion options not be exercised within the time specified, they shall in all respects expire and be of no further force and effect and/or should Grantor earlier declare his intention to release such reserved property to this Regime by amendment recorded as aforesaid, then the property so reserved to Grantor shall become and be deemed thereafter to be part of the Common Elements.

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593 PAGE 97

D. Rights and Obligations of New Co-owners. Immediately upon recording the amendment or amendments adding an additional Phase or Phases, or any part thereof, Co-owners of Apartments or commercial space within such property shall assume all rights and obligations which Co-owners of Phase I may have hereunder and shall bear their proportionate share of the common expenses payable by existing Co-owners, and the percentage ownership of existing Co-owners in common areas shall change in direct proportion to the percentage that the value of the additional property (determined solely for purposes of complying with the Act to be \$61.59 per square foot of interior area) bears to the sum of the value of the property hereby subjected to condominium ownership and the value of the additional property.

E. Elevator Service to Phase III. As part of the additional phase encompassing the proposed penthouse apartment units (Phase III), Grantor reserves the right to add to the interior or exterior of the building elevator service to the penthouse apartment units and/or to extend the existing elevator service to the penthouse apartment units.

F. Replacement of Tennis Court in Phase IV. As part of the horizontal property regime encompassing the proposed new construction of Apartments in Phase IV, Grantor would necessarily use the property where the existing tennis court is located. Prior to beginning construction on such property Grantor shall build or cause to be built, at its sole expense, a tennis court of similar quality on the existing garage or if Grantor elects not to build, or is unable to build on the existing garage, on another portion of the Common Elements designated by the Directors of the Council of Co-owners.

G. Reservation of Construction and Maintenance Easement. As part of the reservation of the option in Grantor to add additional property to this Regime, Grantor reserves unto itself, and its successors and assigns, easements for ingress and egress over, under and across all Common Elements and such other reasonable right of access to and use of the Common Elements subjected to this Regime as may be necessary for the construction, maintenance and marketing of the additional Apartment units or commercial units.

H. Taxes and Assessments Prior to Merger. Prior to filing any amendment to this Master Deed adding additional property to this Regime, Grantor shall be responsible for all taxes and other assessments relating to the property reserved to Grantor.

ARTICLE VI

LIENS

A. Attachment. No lien arising subsequent to the recording of this Master Deed, and while the Property remains subject to the Horizontal Property Act, shall be effective against the Property. During such period, liens or encumbrances shall arise or be created only against each Apartment and the percentage of undivided interest in the Common Elements appurtenant to such Apartment 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 furnished with the consent or at the request of a Co-owner or his agent or his contractor or subcontractor shall be the basis for the filing of a mechanic's or materialman's lien against the Apartment or any other property of any other Co-owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by the Co-owner of any Apartment in the case of emergency repairs thereto. Labor performed or materials furnished for the Common Elements, if duly authorized by the Council, the Manager or the Board of Directors in accordance with the Horizontal Property Act, this Master Deed or the Bylaws, shall be deemed to be performed or furnished with the express consent of each Co-owner, and shall be the basis for the filing of a mechanic's or materialman's lien against each of the Apartments and shall be subject to the provisions of paragraph B below.

B. Discharge. In the event a lien against two or more Apartments becomes effective, the Co-owners of the separate Apartments may remove their Apartments and the percentage of undivided interest in the Common Elements appurtenant to such Apartments from the lien by any payment of the fractional or proportional amounts attributable to each of the Apartments affected. Such

98 PAGE 0 593

individual payment shall be computed by reference to the percentages appearing in this Master Deed. Subsequent to any such payment, discharge or other satisfaction, the Apartment 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 rights against any Apartment and the percentage of undivided interest in the Common Elements appurtenant thereto not so paid, satisfied or discharged.

C. Taxes. Taxes, assessments and other charges of this State, or of any political subdivision, or of any special improvement district, or of any other taxing or assessing authority shall be assessed against and collected on each individual Apartment, each of which shall be carried on the tax books as a separate and distinct entity for that purpose, and not on the buildings or Property as a whole. No forfeiture or sale of the buildings or Property as a whole for delinquent taxes, assessments or charges shall ever divest or in anywise affect the title to an individual Apartment so long as taxes, assessments and charges on the individual Apartment are currently paid.

ARTICLE VII

INSURANCE

The Council shall insure the Property against risks, without prejudice to the right of each Co-owner to insure his Apartment on his own account, for his own benefit.

ARTICLE VIII

RECONSTRUCTION

A. When Required. In case of fire or any other disaster, the indemnity from any insurance obtained by the Council shall, except as hereinafter provided, be applied to reconstruct the Property. Reconstruction shall not be compulsory where it comprises the whole or more than two-thirds (2/3) of the Property. In such case, and unless otherwise unanimously agreed upon by the Co-owners, the indemnity shall be delivered pro rata to the Co-owners entitled to it in accordance with the provision made in the Bylaws or in accordance with the decision of three-fourths (3/4) of the Co-owners if there is no Bylaws provision. Should it be proper to proceed with the reconstruction, the provision for such eventuality made in the Bylaws shall be observed, or, in lieu thereof, the decision of the Council shall prevail.

D. Costs. Where the Property is not insured or where the insurance indemnity is insufficient to cover the cost of reconstruction, the rebuilding costs shall be paid by all the Co-owners directly affected by the damage, in proportion to the value of their respective Apartments, or as may be provided in the Bylaws; and if any one or more of those composing the minority shall refuse to make such payment, the majority may proceed with the reconstruction at the expense of all the Co-owners benefited thereby, upon proper resolution setting forth the circumstances in the case and the cost of the work, with the intervention of the Council. The provisions of this paragraph may be changed by the unanimous resolution of the parties concerned, adopted subsequent to the date on which the fire or other disaster occurred.

ARTICLE IX

AMENDMENTS

A. Master Deed. Except as provided in Article V which provides for amendments by Grantor to add additional Phases, this Master Deed may be amended only by written agreement of all the Co-owners.

*Change Deed
Master Deed
10/2/20 Co-owners*
~~Bylaws, the Bylaws may be amended from time to time by the affirmative vote of a majority of the Co-owners, provided that the total percentage of the Co-owners voting shall be at least 75% of the total percentage of the Co-owners.~~

C. Recording. No amendment to this Master Deed or the Bylaws shall be effective unless and until recorded as required by the Horizontal Property Act.

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ARTICLE X

MISCELLANEOUS

D 593 PAGE 99

A. Application. All Co-owners, tenants of Co-owners, employees of Co-owners and tenants, or any other persons that may in any manner use the Property or any part thereof shall be subject to the Horizontal Property Act and to this Master Deed and the Bylaws.

B. Compliance. Each Co-owner shall comply strictly with the Bylaws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions, and restrictions set forth in this Master Deed or in the deed to the Apartment of such Co-owner. Failure to comply with any of the same shall be ground for a civil action to recover sums due for damages or injunctive relief, or both, maintainable by the Manager or the Board of Directors on behalf of the Council or, in a proper case, by an aggrieved Co-owner.

C. Waiver. No provision 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.

D. Conflicts. This Master Deed is executed to comply with the requirements of the Horizontal Property Act, and in the event that any of the provisions hereof conflict with the provisions of the Horizontal Property Act, the Horizontal Property Act shall control.

E. 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.

F. 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 provision hereof.

G. 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.

H. Termination. All the Co-owners or the sole Co-owner of the Property may waive the horizontal property regime and regroup or merge the records of the Apartments with the Common Elements, provided that the Apartments are unencumbered or, if encumbered, that the creditors on whose behalf the encumbrances are recorded agree to accept as security the undivided portions of the Property owned by the debtors.

IN WITNESS WHEREOF, Grantor has executed this Master Deed this 14th day of OCTOBER, 1981.

Signed, sealed and delivered
in the presence of:

William C. Chappin
Witness

Henry A. Moise
Witness

Hiddleborough, A Limited Partnership

By: Park Tower, Inc., its General Partner

By: *Paul E. Pison*
its VICE-PRESIDENT

and *William J. Cherry*
its SECRETARY

D 593 PAGE 99

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PRORATE

0 593 PAGE 100

Before me, the undersigned notary public, appeared MOISE, who being duly sworn, said that he saw Middleborough, a Limited Partnership by Park Tower, Inc., its General Partner by PAUL E. PINSON its VICE-PRESIDENT and William J. Cleary its SECRETARY attest and seal the same, and said partnership, by said General Partner, deliver said Master Deed as its act and deed, and that HE he with William C. BORD, JR. witnessed the same.

SWORN to before me this the
14th day of OCTOBER, 1981

William C. BORD, JR.
Notary Public for South Carolina

My Commission Expires 8/16/89

Henry D. Moise

0 593 PAGE 100

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STATE OF SOUTH CAROLINA) AMENDMENT TO MASTER DEED OF
COUNTY OF RICHLAND) MIDDLEBOROUGH HORIZONTAL
PROPERTY REGIME

THIS AMENDMENT TO MASTER DEED, executed this 21st day of December, 1984,
by Middleborough, A Limited Partnership ("Grantor").

WITNESSETH:

WHEREAS, Grantor established that certain horizontal property regime
located in Richland County, South Carolina, known as Middleborough
Horizontal Property Regime (the "Regime") by executing and recording that
certain master deed (the "Master Deed") dated October 14, 1981, and recorded
in the Office of the R.M.C. for Richland County, South Carolina, in Deed
Book D593 at Page 92; and

WHEREAS, Article V of the Master Deed provides for merger, at the option
of Grantor, of additional phases into the Regime, including, but not limited
to, adding to the Regime the ground floor of the building in which the
Regime is located; and

WHEREAS, Grantor desires to add the ground floor of the aforesaid
building to the Regime as residential and commercial Apartments pursuant to
the terms of the Master Deed and as further provided hereinbelow.

NOW, THEREFORE, pursuant to its rights to expand the Regime by adding
additional phases thereto in accordance with and pursuant to the terms of
the Master Deed, Grantor does hereby amend the Master Deed as follows:

1. Addition to Regime. Grantor hereby adds to the Regime the real
property consisting of the ground floor of the Regime building, with the
exception of such portions of the ground floor as are already common
elements of the Regime. The portion of the ground floor added to the Regime
hereby is more specifically described and shown as Apartments G-1, G-2, G-3,
G-4, G-5 and G-6 on the floor plan (the "Floor Plan") of the ground floor
attached hereto as Exhibit A and hereby made a part hereof (the portion of
the ground floor added to the Regime shall be referred to hereinafter as the
"Phase II-A Apartments"). The Phase II-A Apartments are hereby submitted to
all of the provisions of the Master Deed and the exhibits attached thereto,
as such may have been amended or may be amended from time to time. Grantor,
for itself and its successors and assigns, hereby assumes as fee simple
owner of the Phase II-A Apartments all rights and obligations of a Co-Owner
under the Regime.

2. Use of Phase II-A Apartments. All Phase II-A Apartments may be
used for residential purposes, including, but not limited to, rental
residential space, or any commercial purpose allowed by applicable law,
including, but not limited to, use of such Apartments as commercial retail
space or commercial office space.

3. Number and Description of Phase II-A Apartments: Percentage
Interest in Common Elements.

(a) The Phase II-A Apartments shall consist of six (6) Apartments
designated as Apartment Unit Nos. G-1, G-2, G-3, G-4, G-5 and G-6 of the
Regime. The Phase II-A Apartments are more particularly described as to
number, location, type and configuration on the Floor Plan. Each Phase
II-A Apartment encompasses and includes all that portion of the building
designated on the Floor Plan as an Apartment and consisting of all
living and storage space bounded by the upper surface of the floor slab,
by the unexposed surfaces of the drywall or plastering forming interior
walls and ceilings, and by the exterior surfaces of windows and window
frames and of exterior doors and the door frames; and all flooring,
floor covering, tile, plaster, wall board, paint, wall covering, doors,
door frames, windows, window frames, cabinets, fixtures, appliances and
other building materials within the space so bounded. Each Phase II-A
Apartment also includes the heating, air conditioning and ventilating
equipment and the ducting, electrical wiring and water and sewer pipes
serving such Apartment exclusively, regardless of where situated. The

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exterior court adjacent to a Phase II-A Apartment and screens covering the doors or windows of a Phase II-A Apartment are also part of the Phase II-A Apartment.

(b) The value of the Regime property including the Phase II-A Apartments is \$12,460,137.50, and the value of the Phase II-A Apartments and all other Apartments is as shown on Exhibit B attached hereto and hereby made a part hereof. The values shown on Exhibit B are fixed for the sole purpose of complying with the South Carolina Horizontal Property Act and irrespective of the actual values, and shall not prevent Grantor or each Co-Owner from fixing a different circumstantial value to his Apartment in all types of acts and contracts.

(c) Ownership of the Common Elements with the addition of the Phase II-A Apartments is apportioned to the individual Apartments according to the percentages set forth on Exhibit B.

3. Apartment Entrances. Each Phase II-A Apartment fronts on the ground level of the southeastern side of the Regime building. Some Phase II-A Apartments have existing doors to the outside of the Regime building and some Phase II-A Apartments have only exterior glass walls. The Owner of each Phase II-A Apartment shall have the option at any time, at his own expense, to cut one (1) or more doors to the outside on the southeastern side of the Regime building for each Phase II-A Apartment, provided that such doors shall be designed in keeping with the existing design and appearance of the exterior of the Regime building.

4. Additional Phases. The Master Deed provides for the addition to the Regime of Phase II, which would include both the ground floor, herein designated the Phase II-A Apartments, and the first floor of the Regime building. Pursuant to Article V of the Master Deed, which provides in part that Grantor may elect to add Phase II, Phase III or Phase IV, or parts of any of them, Grantor has elected to add only the portion of Phase II described hereinabove as the Phase II-A Apartments to the Regime at this time. Grantor reserves its rights under the Master Deed to add the remainder of Phase II, as well as Phase III and Phase IV, or any part of any of them, to the Regime in accordance with the terms of the Master Deed, and no provision hereof shall be deemed a modification or waiver of such rights.

5. Miscellaneous. Except as otherwise provided herein, the terms used herein have the same meaning as provided in the Master Deed. Except as modified hereby, the terms and provisions of the Master Deed are incorporated herein by reference.

IN WITNESS WHEREOF, Grantor has executed this Amendment to Master Deed on the date first above written.

Signed, Sealed and Delivered
in the Presence of:

Middleborough, A Limited Partnership

By: Park Tower, Inc., Its General Partner

By: William H. Henry
Its Vice-President
(CORPORATE SEAL)

John B. Smith
Debra J. Williams

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ED 722-553

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) PROBATE

Before me, the undersigned notary public, personally appeared Benton D. Williamson, who, being sworn, deposed and said that he saw Middleborough, A Limited Partnership, by Park Tower, Inc., its General Partner, by William H. Theas its Vice President, sign, seal and deliver the foregoing Amendment to Master Deed and that he, together with John B. McArthur, witnessed the execution thereof.

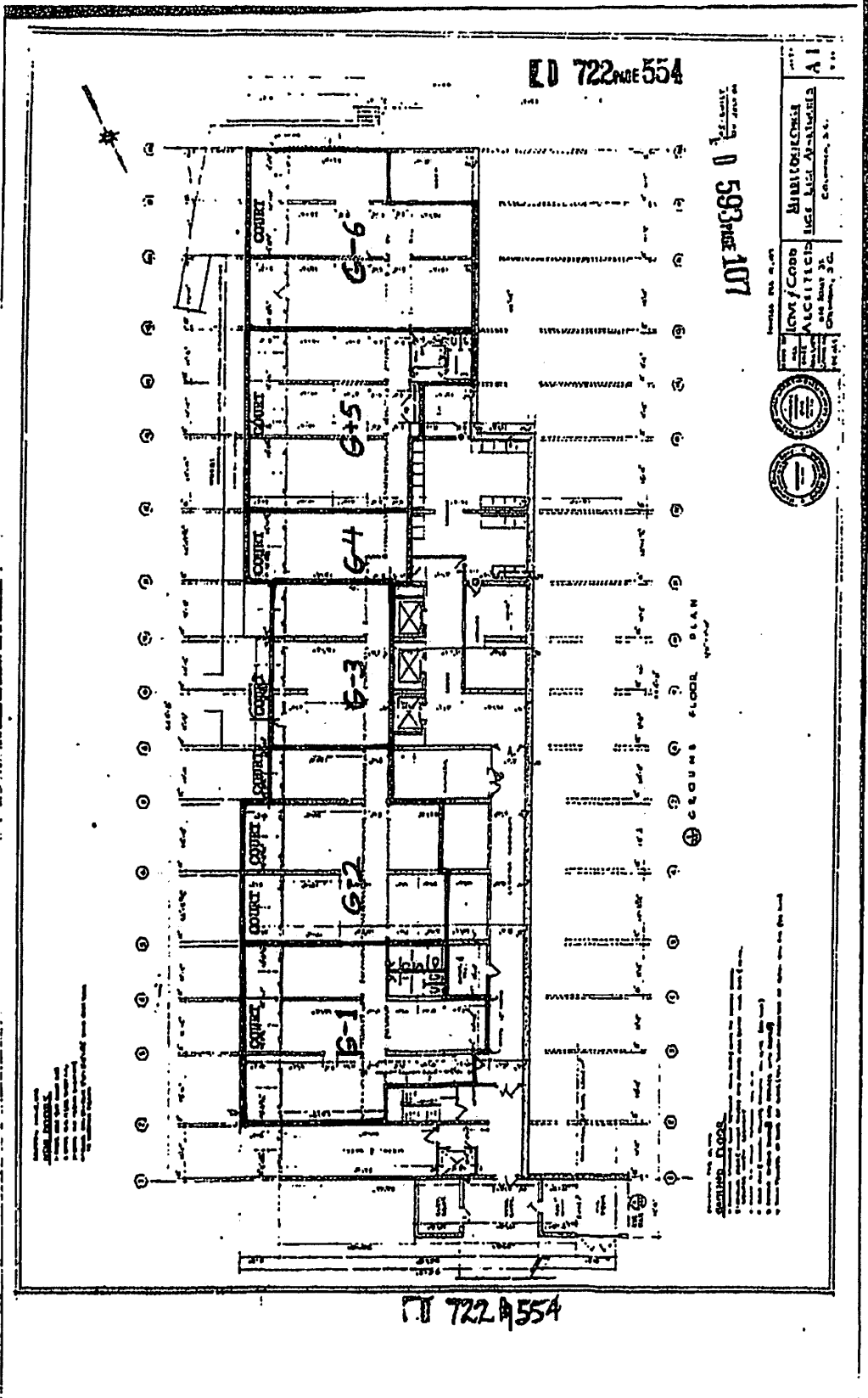
SWORN TO and subscribed
before me this 21st day
of December, 1984.

John B. McArthur (SEAL)
Notary Public for South Carolina
My commission expires 2/1/92

Benton D. Williamson

ED 722-553

ELECTRONICALLY FILED - 2019 Feb 28 4:11 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4001231



ELECTRONICALLY FILED - 2019 Feb 28 4:11 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4001231

ED 722 PAGE 555

Apartment #	Assigned Value	Percentage Interest In Common Elements Expressed As A Percentage	Apartment #	Assigned Value	Percentage Interest In Common Elements Expressed As A Percentage
2A	\$55,800	.44783	6A	\$57,800	.46388
2B	60,300	.48394	6B	62,300	.49999
2C	58,925	.47291	6C	60,925	.48896
2D	68,925	.47291	6D	60,925	.48896
2E	60,300	.48394	6E	62,300	.49999
2F	42,500	.34109	6F	44,500	.35714
2G	42,500	.34109	6G	44,500	.35714
2H	62,275	.49979	6H	64,275	.51585
2I	58,400	.46869	6I	60,400	.48475
2J	58,400	.46869	6J	60,400	.48475
2K	62,275	.49979	6K	64,275	.51585
2L	67,500	.54173	6L	69,500	.55778
3A	56,300	.45104	7A	58,300	.46789
3B	60,800	.48796	7B	62,800	.50401
3C	59,425	.47692	7C	61,425	.50100
3D	59,425	.47692	7D	61,425	.50100
3E	60,800	.48796	7E	62,800	.50401
3F	43,000	.34510	7F	45,000	.36115
3G	43,000	.34510	7G	45,000	.36115
3H	62,775	.50301	7H	64,775	.51986
3I	58,900	.47271	7I	60,900	.48876
3J	58,900	.47271	7J	60,900	.48876
3K	62,775	.50301	7K	64,775	.51986
3L	68,000	.54784	7L	70,000	.56179
4A	56,800	.45585	8A	58,800	.47190
4B	61,300	.49197	8B	63,300	.50802
4C	59,925	.48093	8C	61,925	.49698
4D	59,925	.48093	8D	61,925	.49698
4E	61,300	.49197	8E	63,300	.50802
4F	43,500	.34911	8F	45,500	.36516
4G	43,500	.34911	8G	45,500	.36516
4H	63,275	.50782	8H	65,275	.52387
4I	59,400	.47672	8I	61,400	.49277
4J	59,400	.47672	8J	61,400	.49277
4K	63,275	.50782	8K	65,275	.52387
4L	68,500	.54975	8L	70,500	.56580
5A	57,300	.45987	9A	59,300	.47692
5B	61,800	.49598	9B	63,800	.51203
5C	60,425	.48495	9C	62,425	.50100
5D	60,425	.48495	9D	62,425	.50100
5E	61,800	.49598	9E	63,800	.51203
5F	44,000	.35313	9F	46,000	.36918
5G	44,000	.35313	9G	46,000	.36918
5H	63,775	.51183	9H	65,775	.52788
5I	59,900	.48073	9I	61,900	.49678
5J	59,900	.48073	9J	61,900	.49678
5K	63,775	.51183	9K	65,775	.52788
5L	69,000	.55377	9L	71,000	.56982

ED 722 PAGE 555

ELECTRONICALLY FILED - 2019 Feb 28 4:17 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4001231

Apartment #	Assigned Value	Common Elements Expressed As A Percentage	Apartment #	Assigned Value	Common Elements Expressed As A Percentage
10A	\$60,100	.48234	15A	\$65,700	.52728
10B	64,600	.51845	15B	70,200	.56340
10C	63,225	.50742	15C	68,825	.55236
10D	63,225	.50742	15D	68,825	.55236
10E	64,600	.51845	15E	70,200	.56340
10F	46,800	.37560	15F	52,400	.42054
10G	46,800	.37560	15G	52,400	.42054
10H	66,575	.53430	15H	72,175	.57925
10I	62,700	.50320	15I	68,300	.54815
10J	62,700	.50320	15J	68,300	.54815
10K	66,575	.53430	15K	72,175	.57925
10L	71,800	.57624	15L	77,400	.62118
11A	60,900	.48876	16A	67,700	.54333
11B	65,400	.52487	16B	72,200	.57945
11C	64,025	.51384	16C	70,825	.56841
11D	64,025	.51384	16D	70,825	.56841
11E	65,400	.52487	16E	72,200	.57945
11F	47,600	.38202	16F	54,400	.43659
11G	47,600	.38202	16G	54,400	.43659
11H	67,375	.54072	16H	74,175	.59530
11I	63,500	.50963	16I	70,300	.56420
11J	63,500	.50963	16J	70,300	.56420
11K	67,375	.54072	16K	74,175	.59530
11L	72,600	.58266	16L	79,400	.63723
12A	61,700	.49518	17A	69,700	.55938
12B	66,200	.53129	17B	74,200	.59550
12C	64,825	.52026	17C	72,825	.58446
12D	64,825	.52026	17D	72,825	.58446
12E	66,200	.53129	17E	74,200	.59550
12F	48,400	.38844	17F	56,400	.45264
12G	48,400	.38844	17G	56,400	.45264
12H	68,175	.54714	17H	76,175	.61135
12I	64,300	.51605	17I	72,300	.58025
12J	64,300	.51605	17J	72,300	.58025
12K	68,175	.54714	17K	76,175	.61135
12L	73,400	.58908	17L	81,400	.65328
14A	63,700	.51123	18A	71,700	.57544
14B	68,200	.54735	18B	76,200	.61155
14C	66,825	.53631	18C	74,825	.60052
14D	66,825	.53631	18D	74,825	.60052
14E	68,200	.54735	18E	76,200	.61155
14F	50,400	.40449	18F	58,400	.46870
14G	50,400	.40449	18G	58,400	.46870
14H	70,175	.56320	18H	78,175	.62740
14I	66,300	.53210	18I	74,300	.59630
14J	66,300	.53210	18J	74,300	.59630
14K	70,175	.56320	18K	78,175	.62740
14L	75,400	.60513	18L	83,400	.66933
<u>-Ground Floor</u>					
G1	80,381.64	.70931			
G2	67,441.05	.54125			
G3	47,732.25	.38308			
G4	23,404.20	.18783			
G5	74,523.90	.59810			
G6	83,454.46	.66977			

ED 722 not 556

BYLAWS
OF
MIDDLEBOROUGH;
HORIZONTAL PROPERTY REGIME

THESE BYLAWS of Middleborough Horizontal Property Regime are promulgated pursuant to the Horizontal Property Act of South Carolina (the "Horizontal Property Act") for the purpose of governing Middleborough Council of Co-owners (the "Council") and the administration of Middleborough (the "Property"), which has been submitted to a horizontal property regime. The terms used herein are defined in the Master Deed by which the Property was so submitted, and these Bylaws incorporate and are subject to the provisions of said Master Deed.

ARTICLE I

CO-OWNERS

A. Membership. Every Co-owner shall be a member of the Council. A person who holds title to an Apartment merely as security for payment of a debt shall not be entitled to exercise the rights of a Co-owner unless such person holds a proxy conferring such rights.

B. Voting. Votes of the Co-owners shall be cast only at meetings of the Co-owners convened in accordance with these Bylaws. The affirmative vote of a Majority of the Co-owners, as hereinafter defined, shall be required to adopt amendments.

C. Majority of the Co-owners. As used in these Bylaws, the term "Majority of the Co-owners" means Co-owners entitled to cast a total of more than fifty (50) votes.

D. Quorum. A Majority of the Co-owners present in person or by proxy shall constitute a quorum for the transaction of business at meetings of the Co-owners.

E. Consents. Any action which may be taken by a vote of the Co-owners may also be taken by written consent to such action signed by all Co-owners.

F. Annual Meetings. An annual meeting of the Co-owners shall be held on the second Tuesday in March of each year or at such other time during each year as may be determined by a Majority of the Co-owners. Any business which is appropriate for action of the Co-owners may be transacted at an annual meeting.

G. Special Meetings. Special meetings of the Co-owners may be called at any time by the President of the Council or by a majority of the Board of Directors and shall be called upon the written request of a Majority of the Co-owners. Only such business as is stated in the notice of meeting shall be transacted at a special meeting unless all Co-owners waive notice of any additional business.

H. Notice of Meetings. Written notice of every annual or special meeting of the Co-owners stating the time, date and place of the meeting and, in the case of a special meeting, the business proposed to be transacted shall be given to every Co-owner not fewer than ten (10) nor more than thirty (30) days in advance of the meeting. Failure to give proper notice of a meeting of the Co-owners shall not invalidate any action taken at such meeting unless a Co-owner who 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 Co-owner objects shall be void.

I. Waiver of Notice. Waiver of notice of a meeting of the Co-owners shall be deemed the equivalent of proper notice. Any Co-owner may in writing waive notice of any meeting of the Co-owners either before or after such meeting. Attendance at a meeting by a Co-owner, whether in person or by proxy, shall be deemed waiver by such Co-owner of notice of the time, date and place thereof unless such Co-owner 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

more than
50%
ownership
interest

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0 593 Page 129

thereof unless objection to lack of notice is raised before the business of which proper notice was not given is put to a vote.

J. Place of Meeting. All meetings of the Co-owners shall be held upon the Property or at such other place which is convenient to the Co-owners as the President of the Council or the Board of Directors may direct.

K. Adjournment. Any meeting of the Co-owners may be adjourned from time to time for periods not exceeding forty-eight (48) hours by vote of Co-owners holding a majority of the votes represented at such meeting, regardless of whether a quorum is present. Any business which 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.

L. Order of Business. The order of business at all meetings of the Co-owners shall be as follows:

1. Roll Call;
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. Election of inspectors of election (when required);
8. Election of Directors (when required);
9. Unfinished business;
10. New business.

M. Minutes of meetings. The Secretary of the Council shall prepare, or cause to be prepared, and keep accurate minutes of every meeting of the Co-owners. Such minutes shall be made available for examination and copying by any Co-owner at any reasonable time.

N. Who May Act for a Co-owner. 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 trust shall act by any trustee thereof, and any other legal entity shall act by any managing agent thereof. When a Co-owner consists of two or more persons, any one of such persons shall be deemed authorized to act for all in taking any action on behalf of such Co-owner unless another of such persons objects, in which case the votes which such Co-owner would otherwise be entitled to cast may not be cast.

O. Proxies. Any Co-owner may by written proxy designate an agent to cast the votes of such Co-owner. Unless otherwise stated therein, a proxy shall be deemed to confer the authority to execute consents and waivers and to exercise the right to examine the books and records of the Council. A proxy may be revocable or irrevocable but shall be deemed revocable at will unless otherwise specified therein. No proxy shall be honored until delivered to the Secretary of the Council.

ARTICLE II

BOARD OF DIRECTORS

A. Form of Administration. The administration of the Council and the Property shall be vested in a Board of Directors consisting of not less than three (3) nor more than five (5) Directors elected from the Co-owners. Provided however, that notwithstanding anything to the contrary in this

ELECTRONICALLY FILED - 2019 Feb 28 4:11 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4001231

10 593 PAGE 130

the Property to the Horizontal Property Act of South Carolina, or its successor in interest in the Property, owns fewer than twenty-five (25%) percent of the Apartments in the Property encompassing Phase I or until the passage of three (3) years from the date of recording of the Master Deed for the regime, whichever first occurs, there shall be not more than three directors and Middleborough limited partnership or its successors shall be entitled to designate two of such directors, and any successors to such directors due to vacancy for any reason. The third directorship shall remain vacant until Middleborough limited partnership or its successor has conveyed Apartments in Phase I entitled to more than sixty-seven (67%) percent of the regime votes. Upon such conveyance of Apartments representing more than sixty-seven (67%) percent of the regime votes, the third director shall be elected by a majority vote (according to percentage interest as provided in the Master Deed) of Apartments owned by persons other than Middleborough limited partnership, or its successor;

D. Authorities and Duties. The authorities and duties of the Board of Directors shall include the following;

1. To provide for the security of the Property;
2. To provide for the maintenance, repair and replacement of the Common Elements;
3. To employ and discharge the persons necessary for the operation, maintenance, repair and replacement of the Common Elements;
4. To collect from the Co-owners their respective shares of the Common Expenses;
5. To insure the Property as hereinafter provided;
6. To enact reasonable regulations governing the operation and use of the Property;
7. To enforce the terms of the Horizontal Property Act, the Master Deed and these Bylaws and the Regulations promulgated pursuant hereto as hereinafter provided; and
8. To administer the Council and the Property on behalf of and for the benefit of all Co-owners.

C. Qualification. Only an individual who is a Co-owner, or who together with another person or other persons is a Co-owner, or who is an officer of a corporation, a general partner of a partnership, an associate of an association, a trustee of a trust, or a managing agent of any other legal entity which is a Co-owner, or which together with another person or other persons is a Co-owner, may be elected or continue to serve as a Director of the Council. The number of Directors provided at any one time by a Co-owner which is an organization or which consists of more than one individual shall not exceed the number of Apartments owned by such Co-owner.

D. Election and Term. Subject to the provision of Article II-A, above, the initial Board of Directors shall be elected at the organizational meeting of the Council and shall serve until the first annual meeting of the Co-owners. At each annual meeting of the Co-owners a new Board of Directors shall be elected to succeed the Directors whose terms expire at such meeting. Each Director shall be elected to serve until the next annual meeting of the Co-owners following his election. A director may be elected to succeed himself, and a Director shall be deemed to continue in office until his successor has been elected and has assumed office.

E. Removal. A director may be removed from office with or without cause by the affirmative vote of a Majority of the Co-owners.

F. Vacancies. Any vacancy in the Board of Directors caused by any reason shall be filled by a new Director elected by the affirmative vote of a Majority of the Co-owners.

G. Voting. Each Director shall have one (1) vote on all matters acted upon by the Board of Directors. The affirmative vote of a simple majority of

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ELECTRONICALLY FILED - 2019 Feb 28 4:11 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4001231
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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.

H. Quorum. Two (2) Directors shall constitute a quorum for the transaction of business.

I. Consents. Any action which 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.

J. Referendum. Any action taken by a vote of a Majority of the Co-owners shall be binding upon the Board of Directors and shall supersede any inconsistent action previously or thereafter taken by the Board of Directors, but no such action by the Co-owners shall impair the enforceability of any contract duly authorized or entered into by the Board of Directors pursuant to authority granted in the Horizontal Property Act, the Master Deed or these Bylaws.

K. Annual Meetings. An annual meeting of the Board of Directors shall be held during each fiscal year within ten (10) days following the annual meeting of the Co-owners. The time, date and place of the annual meeting of the Board of Directors shall be fixed at the annual meeting of the Co-owners by mutual consent of the Directors present at such meeting, and no further notice thereof shall be necessary. Any business which is appropriate for action of the Board of Directors may be transacted at a regular meeting.

L. Regular Meetings. Regular meetings of the Board of Directors shall be held at such times, dates and places as the Board of Directors may determine from time to time, but at least three (3) regular meetings shall be held each fiscal year. Any business which is appropriate for action of the Board of Directors may be transacted at a regular meeting.

M. Special Meetings. Special meetings of the Board of Directors may be called from time to time by the President of the Council and shall be called upon the written request of three (3) of the Directors. Only such business as is stated in the notice of meeting shall be transacted at a special meeting unless all Directors waive notice of any additional business.

N. Notice of Meetings. Written notice of every regular or special meeting of the Board of Directors stating the time, date and place of the meeting and, in the case of a special meeting, the business proposed to be transacted shall be given to every Director not fewer than three (3) 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 a Director who 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.

O. 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 meetings. Attendance at a meeting by a Director shall be deemed a waiver 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 thereat unless objection to lack of notice is raised before the business of which proper notice was not given is put to a vote.

P. Place of Meeting. All meetings of the Board of Directors shall be held upon the Property or at such other place convenient to the Directors as the President of the Council or the Board of Directors may direct. Meetings may be conducted by telephone if all Directors consent.

Q. Minutes of Meetings. The Secretary of the Council shall prepare, or cause to be prepared, and keep accurate minutes of every meeting of the Board of Directors. A copy of such minutes shall be distributed to each Co-owner within thirty (30) days following each meeting, and all such minutes shall be made available for examination and copying by any Co-owner at any reasonable

H. Compensation. The Directors shall serve without compensation but shall be entitled to reimbursement by the Council for expenses incurred in the conduct of their duties.

ARTICLE III

OFFICERS

A. Designation. The Council shall have a President, a Vice President, a Secretary and a Treasurer. The Council may also have one or more assistants to the Secretary and to the Treasurer and such other officers as may be necessary from time to time. The offices of the Secretary and the Treasurer may be filled by the same individual.

B. Qualifications. The President and the Vice President must be Directors, and all other officers must be individuals who are qualified to be Directors.

C. Election and Term. Officers of the Council shall be elected at each annual meeting of the Board of Directors and at such other times as may be required to fill vacancies of 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.

D. Removal. Any officer may be removed from office at any time with or without cause by the Board of Directors or by the Co-owners. An officer removed by the Co-owners shall be replaced only by the Co-owners.

E. President. The President shall be the chief executive officer of the Council. He shall preside at all meetings of the Council and of the Board of Directors at which he is present. He shall have all of the general powers and duties which are usually vested in the office of the president of an unincorporated association, including but not limited to the power to appoint committees from among the Co-owners from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Council.

F. Vice President. The Vice President shall take the place and perform the duties of the President whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other Co-owner to take the place and perform the duties of the President on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors.

G. Secretary. The Secretary shall keep the minutes of all meetings of the Co-owners and of the Board of Directors, shall have charge of such books and papers as the Board of Directors may direct, and shall, in general, perform all the duties incident to the office of secretary of an incorporated association.

H. Treasurer. The Treasurer shall have custody of and responsibility for Council funds and securities and shall keep the financial records and books of account belonging to the Council. If a Manager is employed as hereinafter provided, custody of Council 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 of Directors so determine, but in such case the Treasurer shall verify the amounts of Council 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.

I. Compensation. The officers may receive such compensation as the Co-owners may determine and shall be entitled to reimbursement by the Council for expenses incurred in the conduct of their duties.

ARTICLE IV

MANAGER

A. Employment. The Board of Directors may employ a professional Manager to assist in or take charge of the administration of the Council and the Property.

B. Qualification. The Manager may be a corporation or other legal entity. No individual who is a Director or an officer of the Council or who resides in the home of a Director or an officer of the Council shall be the Manager or an officer, director, or agent of the Manager.

C. Authority and Duties. The Manager shall have such authority and duties as may be determined by the Board of Directors and shall report to the Board of Directors or to the President, as the Board of Directors may determine.

D. Compensation. The Manager shall receive such compensation as the Board of Directors may determine.

ARTICLE V

FINANCES

A. Fiscal Year. The fiscal year of the Council shall be the calendar year unless the Co-owners shall otherwise determine.

B. Budget. The Board of Directors shall prepare, or cause to be prepared, and submit to the Co-owners at each annual meeting of the Co-owners a proposed budget for the Council for the fiscal year in which the meeting is held. The proposed budget shall set forth with particularity the anticipated Common Expenses for the fiscal year and the amount of money needed to establish reasonable reserves for the payment of future or unforeseen Common Expenses.

C. Approval of Budget. The proposed budget, as it may be amended upon motion of any Co-owner, shall be submitted to a vote of the Co-owners and when approved by the affirmative vote of a Majority of the Co-owners shall become the budget of the Council for the fiscal year (the "Budget"). The terms of the Budget shall be binding upon the Board of Directors until such terms are amended by action of the Co-owners.

D. Regular Assessments. The funds required by the Budget shall be collected from the Co-owners by the Board of Directors in equal monthly or quarterly assessments as the Board of Directors may determine.

E. 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 the Co-owners shall be collected from the Co-owners by the Board of Directors in such installments as the Co-owners shall determine.

F. Individual Assessments. Any payments to the Council which one or more, but fewer than all, of the Co-owners shall be obligated to make pursuant to the terms of the Horizontal Property Act, the Master Deed or these Bylaws shall be due upon demand and shall be collected by the Board of Directors.

G. Collection. Co-owners shall be liable for all assessments and shall pay the same promptly when due. The Board of Directors shall take prompt and appropriate action 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 Co-owner owing the same shall be required to pay all reasonable costs of collection, including attorney's fees. Assessments together with any and all late charges or penalties and costs of collection as provided herein, shall constitute a lien on the Apartments as provided in the Horizontal Property Act, these Bylaws and the Master Deed.

H. Penalty. An assessment not paid within ten (10) days following the date when due shall bear a penalty of five dollars (\$5.00) plus one percent (1%) of the assessment per month from the date when due. The penalty shall be

ELECTRONICALLY FILED - 2019 Feb 28 4:11 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4001231
FILED 383 REC 133

This paragraph only, an unpaid assessment shall not be deemed overdue until the Board of Directors has delivered to the Co-owner owing the same a demand for payment, unless the Board of Directors has within thirty (30) days prior to the date when due delivered to such Co-owner a written notice of the amount and the date due, in which case no further demand shall be necessary. The Board of Directors may in its discretion waive all or any portion of a penalty or interest imposed pursuant to this paragraph if it affirmatively appears that the failure to pay the assessment when due was caused by circumstances beyond the control of the Co-owner.

I. Accounts. The Board of Directors shall maintain on behalf of the Council a checking account with a state or federally chartered bank having an office in the county where the Property is situated. The Board of Directors may also maintain on behalf of the Council an interest-bearing savings account with a state or federally chartered bank, savings and loan association or building and loan association. If a Manager is employed, said accounts may be maintained in the name of the Manager if the Board of Directors approves. All funds of the Council shall be promptly deposited in one of said accounts, except that the Board of Directors may maintain a petty cash fund of not more than fifty dollars (\$50.00) for payment for minor current expenses of the Council. The books and records relating to any account of the Council shall be made available for examination and copying by any Co-owner at any reasonable time.

J. Payments. The Board of Directors shall provide for payment of all debts of the Council from the funds collected from the Co-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 fifty dollars (\$50.00) shall be reviewed and approved by the President or the Board of Directors before payment is made. All checks and requests for withdrawals drawn upon any account of the Council shall be signed by the President and the Treasurer or by any two (2) alternate officers of the Council designated by the Board of Directors. If a Manager is employed, the Board of Directors may authorize the Manager to draw checks upon the account of the Council. The Board of Directors may also authorize the Manager to make disbursements from the petty cash fund, if any.

K. Bonding. The Board of Directors shall secure from a surety company rated "AAA" or better by Best's Insurance Reports a fidelity bond in an amount of not less than ten thousand dollars (\$10,000.00) covering every individual authorized to withdraw funds from any checking or savings account maintained by the Council. The cost of the bond shall be a Common Expense.

ARTICLE VI

MAINTENANCE AND IMPROVEMENTS

A. Maintenance by Board of Directors. The Board of Directors shall provide for the maintenance, repair and replacement of the Common Elements and shall employ and dismiss the personnel required for such maintenance, repair and replacement.

B. Maintenance by Co-owners. Each Co-owner shall maintain his Apartment in good condition and repair.

C. Default by Co-owner. In the event that any Co-owner fails to perform the maintenance required of such Co-owner by these Bylaws or by any lawful Regulation enacted pursuant hereto 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 Co-owner or which substantially detracts from the value or appearance of the Property, the Board of Directors shall, after giving such Co-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 Co-owner by an individual assessment.

D. Expenses. Except as hereinafter provided, the expenses of all maintenance, repair and replacement provided by the Board of Directors shall be Common Expenses. The expenses of maintenance, repair or replacement which are necessitated by (1) the failure of a Co-owner to perform the maintenance required by these Bylaws or by any lawful regulation enacted pursuant hereto,

loss which is to be borne by a Co-owner in accordance with Article VII of these Bylaws shall be charged to such Co-owner by an individual assessment.

E. Improvements. The Board of Directors shall provide for the making of such improvements to the Common Elements as may be approved from time to time by the Co-owners. The cost of such improvements shall be Common Expenses; provided, however, that no Co-owner shall without his consent be assessed in any one year for the making of improvements to the Common Elements an amount in excess of one percent (1%) of the value of his Apartment as set forth in the Master Deed.

ARTICLE VII

RECONSTRUCTION

A. Decision of Co-owners. In the event of substantial damage to or destruction of any portion of the Property, the damage or destruction shall promptly be appraised by the Board of Directors. If more than two-thirds (2/3) of the Property has been destroyed, the Board of Directors shall promptly call a special meeting of the Co-owners to determine in the manner provided in the Master Deed whether the Property shall be reconstructed. In the event that the Co-owners determine not to reconstruct the Property, the Secretary shall execute a certificate to that effect and cause the same to be recorded in the same manner as these Bylaws; provided, however, that:

1. Any restoration or repair of the Property, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Master Deed and the original plans and specifications referenced in the Master Deed unless other action is approved by Mortgagees on Apartments which have at least fifty-one (51%) percent of the votes of Apartments subject to mortgages, and;
2. Any election to terminate the legal status of the project after substantial destruction or a substantial linking in condemnation of the Property must require the approval of Mortgagees of Apartments which have at least fifty-one (51%) percent of the votes of Apartments subject to mortgages.

B. Reconstruction. Unless the Co-owners affirmatively determine in the manner provided in the Master Deed not to reconstruct the Property following damage or destruction thereof, the Board of Directors shall promptly provide for such reconstruction. Such reconstruction shall encompass and include repair and replacement of all floor coverings, fixtures and appliances originally installed in the Apartment by the builder or equivalent replacements thereof installed by a subsequent Co-owner. If the cost of such reconstruction exceeds ten thousand dollars (\$10,000.00), the Board of Directors shall employ an architect licensed to practice in the jurisdiction or jurisdictions in which the Property is situated to supervise the reconstruction. It shall be the duty of such architect to inspect the progress of the reconstruction at regular intervals and to submit written authorizations to the Insurance Trustee hereinafter identified for the payment for work performed. When an architect is not required by the terms hereof, the Board of Directors may perform such inspections and submit such authorizations.

C. Costs. The Board of Directors shall employ for the purpose of reconstructing the Property the proceeds of any insurance obtained on the Property by the Board of Directors on behalf of the Council. If such insurance proceeds do not cover the cost of the reconstruction, the deficiency shall be borne by the Council as a Common Expense up to an amount equal to the sum of (i) the amount deducted pursuant to a "loss deductible" clause of the insurance policy plus (ii) fees and expenses of the Insurance Trustee hereinafter identified. Any deficiency in excess of such amount shall be borne by the Co-owners in proportion to their respective interests in the portion or portions of the Property reconstructed.

ELECTRONICALLY FILED - 2019 Feb 28 4:11 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4001231

ARTICLE VIII

CONDEMNATION

A. Rights of Co-owners. If any portion of the Property is condemned by any authority having the power of eminent domain, each Co-owner and each Mortgagee shall be entitled to receive notice of such condemnation and to participate in the proceedings incident thereto unless otherwise prohibited by law. Each Co-owner or mortgagee, as their interest may appear, shall be entitled to an individual award to be determined by the value of his interest in the portion or portions of the Property condemned.

B. Duties of the Council. In the event that any award is received by the Council on account of condemnation of any portion or portions of the Common Elements, the Board of Directors shall promptly pay such award to the Insurance Trustee hereinafter identified as trustee for the Co-owners to be disbursed in the same manner as if it were insurance proceeds. The Board of Directors shall promptly call a special meeting of the Co-owners to determine whether any condemned portion of the Common Elements shall be replaced. If the Co-owners determine 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

INSURANCE

A. Hazard Insurance. The Board of Directors shall insure the Property on behalf of the Council for the full replacement cost thereof against all hazards and risks normally covered by a standard "all-risk" policy, including fire and lightning, and the hazards and risks covered by "extended coverage" and by "special extended coverage" in the amount of the replacement cost of the Property without regard to depreciation. Such insurance shall cover only the Apartments and the Common Elements. No insurance of the contents of any Apartment (other than the fixtures originally installed therein during construction and being a part of such Apartment) or any improvements made to an Apartment by any Co-owner shall be provided by the Board of Directors. The hazard insurance obtained by the Board of Directors may provide that an amount not to exceed one thousand dollars (\$1,000.00) shall be deductible from any indemnity payable on account of a single loss, except that in the case of loss caused by wind or hail the deductible amount may not exceed one percent (1%) of the loss. Any such deductible portion shall be borne by the Council as a Common Expense regardless of the number of Co-owners directly affected by the loss.

B. Liability Insurance. The Board of Directors shall also obtain premises liability insurance on the Property providing for a single-limit indemnity of not less than one million dollars (\$1,000,000.00) and covering bodily and personal injury and property damage. The Board of Directors shall not be required, however, to obtain public liability insurance covering accidents occurring within an Apartment or off the Property. The Board of Directors shall cause medical payment coverage to be included within the policy of liability insurance with indemnity limits of five hundred dollars (\$500.00) per person and ten thousand dollars (\$10,000.00) for each accident.

C. General Provisions: All insurance obtained on the Property by the Board of Directors shall be written in the name of the Council, and the cost of such insurance shall be a Common Expense. All such insurance shall be obtained from a company or companies licensed to do business in the State of South Carolina and rated "AAA" or better by Best's Insurance Report. No such insurance shall be permitted to expire except upon resolution of the Co-owners to that effect. Certificates of all policies of hazard insurance obtained on the Property by the Board of Directors on behalf of the Council shall be delivered upon request to any Co-owner or any person holding a mortgage on an Apartment.

D. Hazard Policy Provisions. All policies of hazard insurance on the Property obtained by the Board of Directors on behalf of the Council shall

ELECTRONICALLY FILED - 2019 Feb 28 4:11 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4001231

1. The indemnity payable on account of any damage to or destruction of the Property shall be payable to any persons holding liens on or security interest in any Apartment as their interests may appear;

2. The policy shall not be cancelled without thirty (30) days prior written notice to the Board of Directors and to every holder of a lien upon or security interest in any Apartment who is named in the policy or an endorsement thereto;

3. No Co-owner shall be prohibited from insuring his own Apartment for his own benefit;

4. No insurance obtained by a Co-owner on his own Apartment shall be brought into contribution with the insurance obtained by the Board of Directors;

5. No right of subrogation shall exist against any Co-owner or members of his household;

6. The insurer shall not be entitled to reconstruct in lieu of paying the indemnity in cash if the Co-owners determine in the manner provided in the Master Deed not to repair or restore the Property; and

7. The policy shall not be cancelled on account of the actions of one or more, but fewer than a Majority, of the Co-owners.

If a policy of insurance containing all of the foregoing provisions cannot be obtained at a reasonable cost, one or more of such provisions may be waived by unanimous resolution of the Board of Directors preceded by ten (10) days notice of every Co-owner or by resolution of the Co-owners.

E. Claims. The Board of Directors, on behalf of the Council, shall have exclusive authority to negotiate and settle on behalf of the Co-owners all claims arising under policies of hazard insurance obtained on the Property by the Board of Directors on behalf of the Council. In the event of damage to or destruction of any portion of the Property, the Board of Directors shall promptly file a claim for any indemnity due under any such policies. The Board of Directors shall simultaneously notify the holders of any liens upon or security interests in the Property who may be entitled to participate in such claim or the filing of the same.

F. Insurance Proceeds. The net proceeds received by the Board of Directors from any indemnity paid under a policy of hazard insurance obtained on the Property by the Board of Directors on behalf of the Council shall promptly be paid by the Board of Directors to an Insurance Trustee as Trustee for the Co-owners as hereinafter provided. The Insurance Trustee shall be a state or federally chartered bank selected by the Board of Directors and having trust powers and capital and surplus of five million dollars (\$5,000,000.00) or more. The Insurance Trustee shall hold the insurance proceeds in trust and disburse said proceeds, after deduction of all reasonable fees and expenses of the Insurance Trustee, as follows:

1. If the Co-owners determine in the manner provided in the Master Deed not to reconstruct the Property, the Insurance Trustee shall distribute the insurance proceeds among all the Co-owners and their mortgagors as their interest may appear in proportion to their respective interests in the portion or portions of the Property damaged or destroyed.

2. If the Board of Directors is required to provide for the reconstruction of the Property, the Insurance Trustee shall disburse the insurance proceeds to the person or persons employed by the Board of Directors to effect such reconstruction in accordance with written authorizations submitted to the Insurance Trustee by the architect supervising the reconstruction or by the Board of Directors. Any portion of the insurance proceeds remaining after all the costs of reconstructing the Property have been paid shall be distributed to the Co-owners in proportion to their interest in the

ELECTRONICALLY FILED - 2019 Feb 28 11:11 AM - RICHLAND - COMMON PLEAS - CASE#2019CP4001231

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In making disbursements of the Insurance proceeds, the Insurance Trustee shall be entitled to rely without further inquiry upon the written authorizations submitted as provided above or upon any written certification of facts submitted to the Insurance Trustee by the Board of Directors as hereinafter provided. The Insurance Trustee shall in no event be responsible for obtaining insurance on the Property, paying the premiums on any such insurance or filing claims for any payments due under any such insurance.

G. Insurance by Co-owners. Each Co-owner shall be responsible for obtaining such amounts of the following types of insurance as he deems necessary or desirable:

1. Hazard insurance on his Apartment for his own benefit;
2. Hazard insurance on the contents of his Apartment and on improvements made to his Apartment; and
3. Liability insurance covering accidents occurring within his Apartment.

Any Co-owner who obtains hazard insurance on his Apartment for his own benefit shall within thirty (30) days of obtaining the same deliver to the Board of Directors a certificate evidencing such policy of insurance.

ARTICLE X

NOTICE AND CONSENT OF CERTAIN MORTGAGEES REQUIRED

A. Notice of Action: In addition to any other notice provisions contained in these Bylaws, in the Master Deed or elsewhere, and not in lieu thereof, upon written request to the Council of Co-owners, identifying the name and address of the holder, insurer or guarantor and the Apartment Unit number, any mortgage holder or insurer or guarantor will be entitled to timely written notice of:

1. Any condemnation loss or any casualty loss which affects a material portion of the Property or any Apartment Unit on which there is a first mortgage held, insured, or guaranteed by the requesting mortgage holder or insurer or guarantor, as applicable;
2. Any delinquency in the payment of assessments or charges owed by an owner of an Apartment Unit subject to a first mortgage held, insured or guaranteed by such holder or insurer or guarantor, which remains uncured for a period of sixty (60) days;
3. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Council of Co-owners;
4. Any proposed action which would require the consent of a specified percentage of mortgage holders as specified in Article X B, below.

5. Any election not to reconstruct the Property after substantial damage by fire or other casualty or any election to terminate, regroup or merge the Regime.

B. Consent of Mortgagees: Except as provided in Article V of the Master Deed, but in addition to any other similar provisions contained herein, the consent of the Owners of Apartment units to which at least sixty-seven percent (67%) of the votes in the Council of Co-owners are allocated and the approval of holders of mortgages on Apartment Units which have at least fifty-one percent (51%) of the votes of Apartment Units subject to mortgages, shall be required to add or amend any material provisions of these Bylaws, the Master Deed or other Regime documents of the Property which establish, provide for, govern or regulate any of the following:

1. Voting;
2. Assessments, assessment liens or subordination of such

ELECTRONICALLY FILED - 2019 Feb 23 4:11 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4001231

3. Reserves for maintenance, repair and replacement of the common areas;
 4. Insurance or Fidelity Bonds;
 5. Rights to use of the common areas;
 6. Responsibility for maintenance and repair of the several portions of the project;
 7. Expansion or contraction of the project or the addition, annexation or withdrawal of property to or from the project;
 8. Boundaries of any Apartment;
 9. The interests in the Common Areas;
 10. Convertibility of Apartment Units into Common Areas or Common Areas into Apartment Units;
 11. Leasing of Apartment Units;
 12. Imposition of any right of first refusal or similar restriction on the right of an Apartment Unit owner to sell, transfer, or otherwise convey his Apartment; and
 13. Any provisions which are for the express benefit of mortgage holders, or insurers or guarantors of first mortgages on Apartment Units.
- C. Presumption of Consent: Any mortgagee who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

ARTICLE XI

RESTRICTIONS AND REGULATIONS

A. Restrictions. The use of the Property shall be subject to the following restrictions:

1. Apartments in Phase I shall be used only as residences.
2. No Co-owner shall maintain or permit any nuisance within his Apartment or unreasonably interfere with the use and enjoyment of the Property by any other person entitled to the same by creating anywhere on the Property or permitting within his Apartment the creation of excessive noise, smoke or offensive odors. No person shall maintain on the Property, and no Co-owner shall permit within his Apartment, any condition which is unreasonably hazardous to the life, health or property of any other person.

3. No person shall make any additions to or perform any work upon the Common Elements or otherwise alter the Common Elements without the express authorization of the Board of Directors. No Co-owner shall alter or permit the alteration of the external appearance of any portion of his Apartment without the express approval of the Board of Directors.

B. Regulations. The Board of Directors shall adopt and amend from time to time such reasonable regulations ("Regulations") governing the operation and use of the Property as they may deem necessary or desirable. It shall not be necessary to record Regulations newly adopted or the amendment or repeal of existing Regulations, but no Co-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 such Co-owner.

C. Enforcement. The Board of Directors shall enforce the terms of the Horizontal Property Act, the Master Deed and these Bylaws and the Regulations promulgated pursuant hereto and shall take prompt and appropriate action to

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correct any violations of the same. In addition to any other remedy to which the Council or any Co-owner may be entitled, the Board of Directors may impose against a Co-owner reasonable fines not to exceed a total of ten dollars (\$10.00) per day for any violation of the terms of the Horizontal Property Act, Master Deed or these Bylaws or of the Regulations promulgated pursuant hereto. Such fines shall be collected by individual assessment. Each day during which a violation occurs or continues may be deemed a separate offense.

D. Responsibility of Co-Owners. Each Co-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 Co-owner shall not relieve any member of his household or any of his tenants, agents or guests for any liability to the Council or to a Co-owner for their own acts.

ARTICLE XII

LIABILITIES AND INDEMNIFICATION

A. Liability of Council. No Co-owner shall be liable upon a debt or tort of the Council for any amount in excess of such portion of the liability of the Council which bears the same ratio to the total liability as to percentage of interest of such Co-owner in the Common Elements bears to the whole. All correspondence of the Council and all contracts executed by the Council shall incorporate the following recital:

The Middleborough Council of Co-owners is an unincorporated association established pursuant to the Horizontal Property Act of South Carolina. No member of the Council shall be liable upon a debt of the Council for an amount in excess of such portion of the debt which bears the same ratio to the total debt as the number of votes in the Council which the member is entitled to cast bears to the total number of votes which all members of the Council are entitled to cast.

B. Indemnification Among Co-owners. Each Co-owner shall be entitled to contribution from and indemnification by every other Co-owner to the extent that such Co-owner discharges or is required to discharge any portion of any liability of the Council in excess of such Co-owner's proportionate share thereof, except that no Co-owner shall be required to provide contribution or indemnification on account of a debt which was due and payable prior to the time such Co-owner became a Co-owner.

C. Liability of Directors and Officers. No Director or officer of the Council shall be liable to any Co-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 Horizontal Property Act, the Master Deed or these Bylaws.

D. Indemnification of Directors and Officers. The Council shall indemnify and defend each Director and each officer of the Council from any liability claimed or imposed against him by reason of his position or actions as a Director or an officer of the Council if all of the following conditions are satisfied:

1. Such Director or officer is not required to bear such liability by the terms of the Horizontal Property Act, the Master Deed or these Bylaws;
2. Such Director or officer gives the Council adequate notice of the claim or imposition of liability to permit the Council reasonable opportunity to defend against the same; and
3. Such Director or officer cooperates with the Council in defending against the liability.

The expense of indemnifying a Director or an officer shall be a Common Expense and shall be borne by all the Co-owners, including such Director or officer, in accordance with their percentage of ownership.

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ARTICLE XIII

ATTESTATIONS AND CERTIFICATIONS

A. Attestation of Documents. The presence of the signature of the Secretary or an assistant secretary of the Council on any contract, conveyance or any other document executed on behalf of the Council by another officer of the Council shall attest:

1. That the officer of the Council 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 Council and that the signature of such officer subscribed to the document is genuine; and

2. That the execution of the document on behalf of the Council has been duly authorized.

B. Certification of Documents. When any document relating to the Property or the Council is certified as authentic by the Secretary or an assistant secretary of the Council, a third party without knowledge or reason to know to the contrary may rely on such document as being what it purports to be.

C. Certification of Actions and Facts. When a written statement setting forth (i) actions taken by the Co-owners or by the Board of Directors or (ii) facts relating to the Property or the Council as determined by the Board of Directors is executed by the Secretary or an assistant secretary of the Council, a third party without knowledge or reason to know to the contrary may rely on such statement as factually true and correct.

ARTICLE XIV

AMENDMENTS

A. Procedure. These Bylaws may be amended from time to time by resolution adopted by the affirmative vote of Co-owners entitled to cast a total of no fewer than seventy-five (75) votes. No amendment shall be effective unless and until recorded as an amendment to the Master Deed as required by the Horizontal Property Act.

B. Effect. All Co-owners, tenants of Co-owners, employees of Co-owners and tenants, and any other persons that may in any manner use the Property or any part thereof shall be bound to abide by any amendment to these Bylaws duly adopted and recorded as specified herein.

ARTICLE XV

MISCELLANEOUS

A. Record of Ownership. Any person who acquires title to an Apartment except a person who acquires title to an Apartment merely as security for a debt, shall promptly inform the Board of Directors of the identity of such person and the date upon and manner in which title to the Apartment was acquired. The Board of Directors shall maintain a record of the names of all Co-owners and of the dates upon which they acquired title to their Apartments.

B. Notices. Any notices or documents placed in the mail receptacle or

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D. Conflicts. In the event of any conflict between these Bylaws and the Horizontal Property Act or the Master Deed, the Horizontal Property Act or the Master Deed shall control, as appropriate. In the event of a conflict between these Bylaws and the Regulations promulgated pursuant hereto, these Bylaws shall control.

E. 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.

F. 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.

G. Gender and Number. All provisions 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.

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ELECTRONICALLY FILED - 2019 Feb 28 4:11 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4001231

Middleborough

Horizontal Property Regime



Rules and Regulations

Revised January 7th 2019

ELECTRONICALLY FILED - 2019 Feb 28 4:11 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4001231

ELECTRONICALLY FILED - 2019 Feb 28 4:11 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4001231

Index

I.	SECURITY	2
II.	RESIDENT AND STAFF RELATIONSHIPS	3
III.	MANAGEMENT RESPONSIBILITIES	4
IV.	VEHICLES – REGISTRATION AND PARKING	4
V.	COMMON AREAS – GENERAL	6
VI.	COMMON AREAS - ELEVATOR, LOBBIES & RESIDENT HALLWAYS.....	6
VII.	COMMON AREAS - COMMUNITY ROOM.....	7
VIII.	COMMON AREAS - SWIMMING POOL.....	7
IX.	COMMON AREAS - EXERCISE ROOMS	8
X.	COMMON AREAS – GROUND LEVEL.....	8
XI.	COMMON AREAS - TENNIS COURTS	9
XII.	PETS.....	9
XIII.	REPAIRS AND RENOVATIONS	9
XIV.	NOISE AND ODORS.....	12
XV.	MOVING AND APPLIANCE DELIVERIES.....	12
XVI.	BUILDING APPEARANCE	13
XVII.	TRASH AND RECYCLING.....	14
XVIII.	GUESTS AND RENTERS	14
XIX.	COMMUNICATIONS POLICY	15
XX.	MISCELLANEOUS	15
XXI.	SHORT TERM RENTALS.....	17
XXII.	GARAGE SITE PLANS.....	18

Middleborough Property Regime – Rules and Regulations

The rules outlined in this booklet are in place to ensure the peaceful enjoyment, maintenance thereof, and security of Middleborough's residents. The rules apply to all co-owners, residents, and guests and will be enforced by the Middleborough Horizontal Property Regime, its Board of Directors, and its employees. Charges, fines or costs associated with any violation of these Rules will be treated as an assessment, as defined in the Bylaws, unless otherwise specified. Co-owners may request a variance for any Rule that may require special consideration for specific circumstances.

The Rules and Regulations for the Middleborough Horizontal Property Regime contained here in supersedes and replaces any previously published revision thereof.

From time to time the Middleborough Horizontal Property Regime Board may update these Rules and Regulations. Such updates will be approved by the Board at an open meeting and shall be binding and enforceable by the Regime.

A co-owner is a person who owns the condominium unit and pays the regime fees, assessments, and property taxes. A resident is a person who resides in the condominium. Residency is established by receiving mail at Middleborough under the unit number occupied and paying utility costs and other related expenses for the unit. A guest is a person whose mailing address is not that of any Middleborough unit and who is temporarily housed for any length of time in a co-owner's or resident's unit. A tenant is a person who is leasing any of the commercial spaces at Middleborough.

Middleborough Property Regime – Rules and Regulations

I. SECURITY

- A. The security and quiet enjoyment of all co-owners/residents (hereto known as residents) is a primary goal of Middleborough management. Every resident should be courteous to their neighbors and considerate of their rights and expectations while living at Middleborough.
- B. Middleborough is a "Crime Watch" area and residents should report immediately any suspicious behavior or activity in or outside the building to the security officer or management.
- C. All entrances to the building will be secured at 9:00 p.m. each evening until 7:00 a.m. the following morning. Residents have access to the building at all times; unaccompanied guests and all workers must *sign in* prior to being allowed into residential areas of the building.
- D. Deliveries may be made to residential areas of the building provided that the resident has notified the security officer on duty that a delivery is expected, or the security officer is able to confirm by phone that the resident is home to take the delivery. The delivery agent must sign in and present a photo ID to the security officer on duty before being allowed to board an elevator.
- E. Contractors *bringing equipment into the building must enter and leave the building using the ground floor loading entrance*. Contractors will not be allowed into the residential areas of the building without specific permission /authorization of the resident in whose unit work is being done. All contractors are required to sign in; *further, they must present a photo ID to the security officer on duty if asked*.
- F. Any activity prohibited by law is strictly forbidden on Middleborough property and should be reported immediately.
- G. Customers and clients of commercial businesses of Middleborough are not permitted in the residential areas of the building. Further, those customers and clients may not use the pool or the pool deck.
- H. Key fobs are used to control access to locked areas that residents have the right to enter. Fobs may be purchased at the management office.
- I. Key fobs are registered to the current holder, and conveyance after a unit sale or change of leaser should be communicated to the management office so that they fob will be registered with the new resident. Failure to communicate may result in the fob being deactivated without warning.

Middleborough Property Regime – Rules and Regulations

J. Key fobs not used at least once every 6 months will be automatically deactivated. Fobs can be reactivated by residents by visiting the management office.

II. RESIDENT AND STAFF RELATIONSHIPS

A. The staff of Middleborough, including the site manager, the security officers and maintenance personnel, are all employed under contracts with the Middleborough Horizontal Property Regime. They are hired to perform specific duties and functions as outlined in their respective contracts. Residents are asked to treat the staff with respect and common courtesy. A professional, business-like work environment is expected. The US Department of Labor laws governing appropriate work environments will apply. Residents violating the labor law will receive a written warning letter at a first offense, with subsequent violations being referred to the regime attorney.

B. The site manager is responsible for the day-to-day management of the facility and their time is extremely valuable given the issues to be dealt with on a daily basis. A professional decorum must be maintained between the site manager and the residents. Chatty discussions should be avoided. If a resident has a question or problem that needs to be addressed by management, this should be communicated concisely.

C. The security officers are on site to provide limited assistance to the residents of Middleborough and to ensure the building is under watch twenty-four hours a day. Security officers have a serious responsibility for the security and safety of residents of Middleborough. These officers are not expected or required to provide personal services for residents.

D. Maintenance personnel have specific duties to perform in the building and are not to be directed by residents to perform any service or repairs except in an emergency. Maintenance personnel are instructed to perform those duties as directed by the Site Manager or Officer of the Regime.

E. Management employs a maintenance engineer to service the physical plant. In-unit service will be provided for emergency repairs that, if not done, would impact abutting units. Residents are billed for such in-unit emergency services. A resident needing any emergency service gives tacit approval for admittance to their unit.

Middleborough Property Regime -- Rules and Regulations

III. MANAGEMENT RESPONSIBILITIES

- A. The Board of Directors hires a management company to assist with the day-to-day operation of Middleborough and to advise the Board on various issues. *Residents should communicate directly with the site manager to report leaks, rules violations, and issues that affect the common elements such as housekeeping, grounds maintenance, and building maintenance.* If the management office is closed, and the issue poses a danger to property or an individual, the security officer on duty should be notified.
- B. Issues that need to be addressed to the Middleborough Board of Directors should be communicated in writing to the Board president via the management office using either a hard copy letter or email.
- C. The management company is expected to carry out the policies set by the Board. If a resident disagrees with a policy, the resident should bring the issue to the attention of the Board at an open Board meeting or submit a letter to the Board via the management office.
- D. Resident to resident disputes should be handled between the parties involved. Management is not required or encouraged to get involved in any such dispute residents are having with their neighbors.

IV. VEHICLES -- REGISTRATION AND PARKING

- A. Residents must register their vehicles (including mopeds, motorcycles, boats, trailers, and RV's) with the site manager within five (5) days of moving in. A numbered sticker will be issued and must be placed on the vehicle in the location designated on the sticker application directions. Should the resident change vehicles or license plates, a new sticker is required. If a resident moves, the Middleborough registration is no longer valid.
- B. Residents are assigned one parking space per unit according to site plan at the end of this document.
- C. Gate remotes used to gain entrance to the garage's first level and the reserved parking spaces may be purchased at the management office.
- D. Vehicle registration forms are available at the management office.

Middleborough Property Regime – Rules and Regulations

- E. The parking area located on the south side of the building is reserved for handicapped parking as indicated by the striping and signage. No parking is allowed in handicapped parking spaces without a valid current handicapped parking permit. Violators' cars will be towed without notice and at the owner's expense. Violators are subject to a \$500 fine from the city as well.
- F. Stopping immediately adjacent to and in front of the south entrance is not allowed except for loading and unloading passengers. Drivers must remain in the vehicle in this area. This road is designated as a fire lane to accommodate emergency vehicles. Cars parked there may be towed without notice.
- G. The area located at the north end of the building is the service entrance and is designated exclusively for loading and unloading. There is a thirty (30) minute parking limit in this lot. The lot is to be used solely for deliveries and for moving into and out of the building. Residents needing more time than 30 minutes to load or unload their vehicle must get authorization from the security officer to exceed the parking limit. Towing in this lot is enforced if a resident blocks the dumpsters, recycling bins, or exceeds the 30-minute parking limit.
- H. Guest and resident parking is provided in the west lot above the swimming pool. Residents must notify management if any long-term guests will need parking. It is the responsibility of the resident to inform their guests of the parking regulations.
- I. The east lot is designated for commercial vehicles and the commercial tenants on the ground and first floors. Residents choosing to park in this lot do so at their own risk, as towing may be enforced at any time by the commercial tenants.
- J. Head-in parking is recommended for all vehicles using the outdoor parking lots, and is required for trucks, vans, and SUV's in order to keep sidewalks clear and lawn areas free for groundskeeping.
- K. Residents must register the vehicles of their long-term (one-month or longer) guests with the management office.
- L. Parking lots are not to be used for any purpose other than parking.
- M. Motorcycles, mopeds, and bicycles are not allowed to be parked or be driven on sidewalks, grass, or delivery areas.
- N. Vehicles are not to be washed or serviced anywhere on the Middleborough premises.

Middleborough Property Regime – Rules and Regulations

O. Vehicles that are inoperable or chronically neglected (including but not limited to flat tires) and vehicles that do not have current valid registration may not be parked anywhere on Middleborough property. Such vehicles are subject to towing after the vehicle has been tagged by the security office for 24 hours.

P. Bicycles can be stowed on the first or second level of the garage in the racks provided.

V. COMMON AREAS – GENERAL

A. Residents and their guests must respect all common areas

B. Playing and/or loitering in the hallways, elevators, community rooms, and lobby is not permitted.

C. Individuals using any of the common areas must properly dispose of their trash and litter and replace any furnishings they have moved.

D. Shirts and shoes must be worn in common areas except at the pool and in the sauna rooms.

E. Sidewalks, entrances, elevators, hallways, tennis courts, pool decks and stairways must not be obstructed and must only be used for the purpose intended.

F. Commercial tenants and their customers, clients, and guests are expected to conduct their business in a quiet, professional manner and with respect and consideration for Middleborough residents at all times.

G. Any commercial vendor or client must be accompanied by a resident if they are in the reception area.

H. Smoking, including vaping, is prohibited in all common areas including the pool.

VI. COMMON AREAS - ELEVATOR, LOBBIES & RESIDENT HALLWAYS

A. Elevator areas and hallways must remain free of obstacles that could potentially block access to individual units or hinder emergency personnel and equipment.

B. Foyers on the residential floors may be decorated if the majority of the residents on the floor agree. The cost of decorating is the responsibility of the floor's residents. The Board and management are not responsible for regulating the decor in the hallway foyers.

Middleborough Property Regime – Rules and Regulations

- C. Doors to individual units must remain closed to avoid noise, smoking and cooking odors in the hallways.

VII. COMMON AREAS - COMMUNITY ROOM

- A. The community room is a shared facility. Residents may book the room for private functions once a month at no charge, provided they submit a \$50 deposit which will be returned if the room is left clean and the furniture properly positioned. Residents are responsible for any damage incurred during the time of their use. Residents should ask management or a security officer to verify the room is being left in acceptable condition.
- B. The community room has two sections which may be booked independently or together as a single unit. The Fire Marshal has rated the community room for a combined maximum of 35 people.
- C. The security officer will maintain a calendar to record all community room reservations and shall note the date, time, and purpose of the event, as well as the name and unit number of the resident making the reservation. All reservations must be made in person through the security office at least 24 hours prior to the event.
- D. The resident making the reservation must be in attendance at the function.
- E. The resident is responsible for cleaning the community room immediately following the end of the function.
- F. By making reservations, the resident agrees to: 1) repair or replace any damage or missing property of the Regime and 2) indemnify and hold harmless the Regime against any loss or injury in connection with the use of the community room.
- G. Residents may use the community room for personal activities such as reading, study, or small gatherings provided another resident has not booked the room for a function.

VIII. COMMON AREAS - SWIMMING POOL

- A. The swimming pool and adjacent areas are for the exclusive use of residents and their guests. Guests must be accompanied by a resident at all times. Residents and their guests must wear a pool pass which may be purchased at the management office.
- B. Residents may purchase up to 6 passes annually, with a per unit limit of 6 passes.
- C. There is no lifeguard on duty at the pool. All persons use the pool at their own risk.

Middleborough Property Regime – Rules and Regulations

D. Everyone using the pool must observe the rules posted on the signage in the pool area. Some specific rules include the following:

1. Glass containers are not permitted in the pool area.
2. Activities that pose a danger to anyone in the vicinity of the pool are prohibited. Such activities include running, pushing, and diving.
3. Loud or boisterous activity or music that may disturb others is not allowed.
4. Proper swimming attire must be worn in the pool area. Shirts and footwear should be worn entering and exiting the pool area. No resident or guest should enter the building after swimming wearing wet clothing.
5. All personal items such as floats, toys, and pool noodles must be removed from the pool area when the person who brought the items leaves.
6. The pool may not be reserved for private parties.
7. The Board has authorized the security officer on duty to monitor the pool as often as necessary for unauthorized users. People in the pool area will be asked to show their pool pass. If they do not have the proper pass, or if they are unaccompanied guests, they will be required to leave.
8. If a pool umbrella is used, the resident must ensure that it is closed before leaving the pool area.

IX. COMMON AREAS - EXERCISE ROOMS

- A. Exercise and sauna rooms are restricted to their respective genders and are located on the first floor at the north end of the building. The rooms are open 24 hours a day. Access is gained using the resident's key fob.
- B. Only residents and their guests may use the facilities.
- C. Exercise equipment will not be brought into or removed from the exercise rooms without prior approval of management. Residents should report broken or unusable equipment to the site manager.
- D. Building dress codes apply when entering and leaving the exercise rooms.

X. COMMON AREAS – GROUND LEVEL

- A. Grocery carts are provided for the convenience of the residents and should be returned to the ground level immediately after each use. Contractors shall not use the black "Middleborough" carts, they can use any other branded cart.

Middleborough Property Regime – Rules and Regulations

- B. Coin operated washer and dryers are available for resident's use. Debit and credit cards may also be used.
- C. Beverage and snack vending machines are located on the ground floor.

XI. **COMMON AREAS - TENNIS COURTS**

- A. The tennis court is not available at this time.

XII. **PETS**

- A. Presently, only cats are allowed as pets. Birds, dogs, and exotic pets are not allowed.
- B. All pets must be registered with management office. *Two pets are allowed per unit.*
- C. A waiver for more than two pets or for a pet currently not allowed under the current regulations may be requested. In granting waivers, the Board will consider the current pet population, the resident's past ability to care for a pet and other factors unique to the request.
- D. Pet owners must transport their pets in appropriate carriers when in the common areas of the building. Pets being taken for walks must be leashed and must enter and exit the building through the loading dock on the ground floor.
- E. Pet litter must be double bagged before depositing in the trash chute or must be carried to the dumpster. Residents depositing pet litter directly into the trash chute will be fined \$10 for each violation and may be billed for the cost of cleaning and disinfecting the chute. After two violations, the owner's pet privileges will be revoked.

XIII. **REPAIRS AND RENOVATIONS**

- A. Plans for renovations in a residential or commercial unit must be submitted to management for review and written approval of those plans must be obtained before work begins. Work will be inspected in the presence of the co-owner by management when the work is completed.

Middleborough Property Regime – Rules and Regulations

B. MIDDLEBOROUGH WAS CONSTRUCTED PRIOR TO ASBESTOS BEING PROHIBITED IN BUILDING MATERIALS. BECAUSE ASBESTOS MAY BECOME AN ISSUE IN RENOVATIONS (I.E., DISTURBANCE OF ANY WALL, CEILING OR FLOOR SURFACE), THE BOARD OF DIRECTORS HAS REQUIRED THAT CO-OWNERS WISHING TO RENOVATE THEIR UNITS OBTAIN AN ASBESTOS SURVEY TO ENSURE THAT ANY ABATEMENT THAT MAY BE REQUIRED IS ADDRESSED PRIOR TO THE START OF CONSTRUCTION.

C. All work, both repair and renovation, must be conducted in a responsible and workmanlike manner. Co-owners must use licensed contractors for any work requiring a permit or any work for which the State requires licensed contractors. A list of contractors and sub-contractors is available at the management office. Any contractors on this list have evidenced willingness to work at Middleborough; however, neither the Regime nor Management accepts any responsibility for the quality of their work or their business practices.

D. Obtaining permits for renovations is the responsibility of the co-owner. Management may notify the city of Columbia to schedule an inspection if the co-owner has not followed proper protocols. The co-owner is responsible for paying any fines and/or court costs associated with violations the inspector uncovers.

E. No repair, maintenance, or modification of the Common Elements is permitted without written approval of the Board.

F. All contractors are required to sign in and present a photo ID at the security desk before they are allowed to proceed to the residential units.

G. Work associated with renovation and repair is limited to the hours of 8:30 a.m. to 6:00 p.m., Monday through Saturday, unless Board approval has been obtained for extended work hours. No work is permitted on holidays*.

*Holidays are: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

H. Residents are responsible for damage to any common area caused by their contractor and shall pay for the cost of replacement or repairs made therein, including plumbing fixtures, drain pipes, line stoppages, overflows, carpet, elevators and the like.

Middleborough Property Regime – Rules and Regulations

- I. Contractor's supplies, tools, and equipment must be brought into the building through the service entrance and taken to the individual unit via the service elevator only. Contractor vehicles are not permitted to park at the service entrance except to load and unload tools and supplies. Residents are responsible for reminding their contractors that there is a 30-minute parking limit at the service entrance.
- J. Contractors must remove construction debris and discarded appliances from the premises. Under no circumstances should construction debris be placed in the dumpster. Residents must ensure that their contractor properly removes all materials and debris from the common areas prior to leaving Middleborough. If the contractor fails to remove the debris, the resident must clean up what is left by their contractor within two (2) hours of the contractor's departure.
- K. HVAC units that need to be replaced must be located inside the respective utility area/closets. Condensing unit installations are not permitted on the balcony areas (outside). Only qualified and licensed contractors should replace air conditioning systems. Obtaining permits governing such replacements is the responsibility of the co-owner. Regular maintenance of the unit's HVAC system, including small motor replacement, filter replacement, or thermostat modifications does not require approval or permitting.
- L. Washer/dryer installations in individual units are not allowed. All existing washer/dry installations may be allowed to remain provided they meet code requirements and the co-owner agrees to periodic inspections as needed by management.
- M. Penetration of structural walls (concrete walls) is not allowed without prior approval of management. Plans for this work must be reviewed and approved by a licensed and qualified structural engineer at the resident's expense prior to any work being done.
- N. No electrical or plumbing modifications may be made by a resident without prior approval of management. Only licensed, qualified electricians and plumbers will be hired for such work. Proper permits must be obtained from the City of Columbia and posted on the door or next to the door outside of the unit. Minor repairs, such as unstopping a drain-line, do not require approval. Any electrical or plumbing work that is located inside a wall must be permitted and inspected.
- O. The screening and/or glassing in of balcony areas must be approved by management prior to the modification.

Middleborough Property Regime – Rules and Regulations

XIV. NOISE AND ODORS

A. Any work in an individual unit that creates a vibration or noise must be limited to the hours of 8:30 a.m. to 6:00 p.m., Monday through Saturday. Work on holidays* is prohibited.

B. Residents should be mindful of normal sounds associated with their occupancy, such as TV and music volume and housekeeping sounds such as vacuuming before 8:30 a.m. and after 9:00 p.m.

C. Limiting offensive odors, (e.g., cigarette and cigar smoke, toxic or dangerous fumes, and strong cooking smells) is the responsibility of every resident. If any resident, guest or contractor working in a unit causes any odor that may be dangerous to the health of another resident, the cost of any necessary remediation will be billed to the responsible party and the resident will be subject to a fine up to \$10.00 per day that the odor is present.

D. Doors to individual units should remain closed to prevent noise and odors from migrating into the hallways.

XV. MOVING AND APPLIANCE DELIVERIES

A. When moving large objects, the service elevator must be used, and the objects must be brought in through the service entrance. Grocery carts are available near the vending machines for residents who have multiple packages or large deliveries. The carts must be returned to the ground floor immediately after use.

B. Residents who are moving in or moving out must schedule their move with the security officer at least 24 hours before the move is to occur. Moving hours are between 8:30 a.m. and 6:00 p.m., Monday through Saturday. Moving on Sunday and holidays* is allowed only with management's approval. No move in or out may begin later than 1:00 p.m.

C. Residents are responsible for any damage incurred to the common elements while moving their possessions. Common elements include, but are not limited to, the elevator, walls, carpeting, ceiling tiles, and service entrance doors.

Middleborough Property Regime – Rules and Regulations

- D. A \$100.00 deposit is required when using the service elevator for moving in or moving out. The deposit may be in the form of cash or check when moving in but must be in cash when moving out. The deposit will be eligible for return to the resident if no damage to the elevator is found, and if a resident who is moving out has returned all fobs and garage remotes. The amount of the deposit will be reviewed from time to time by the Board and adjusted if warranted.
- E. Movers, contractors, and delivery personnel must share the service elevator with each other. No single agent may lock the elevator to reserve it exclusively.
- F. Residents requiring the use of a service area parking space for longer than 30 minutes are required to notify the security officer on duty to obtain permission. Vehicles impeding the smooth flow of deliveries will be towed without notice at the owner's expense.
- G. Multiple vehicles for the same move will not be permitted in the service lot if those vehicles impede normal traffic or they create an unsafe condition for residents.

XVI. BUILDING APPEARANCE

- A. Nothing (including but not limited to clothes, rugs, sheets, towels, and blankets) may not be hung from the balcony railing at any time.
- B. Only white or off-white manufactured or designed window treatments are permitted. All colored drapes must have a white or off-white lining.
- C. Temporary balcony enclosures such as shades and curtains must be adequately secured. Management will determine if any item that hangs at the balcony's edge poses a hazard and if so, will request removal of such an item.
- D. Nothing should be thrown from or swept off the balcony including plant debris, dust/dirt, and smoking materials.
- E. No signs or advertisements are allowed to be posted on the premises
- F. All residents must exercise care in cleaning and maintaining their individual balcony areas. Plants must have saucers to retain water. Hanging items such as plants and bird feeders must be hung 3 feet from the railings. Windsocks designed to keep pigeons away are permitted, but banners are not allowed.
- G. Balconies are not to be used as storage areas for hazardous materials or items that would diminish the esthetic décor of the building. The resident will be responsible for accidents, destruction of property, or littering if items blow off their balconies.

Middleborough Property Regime – Rules and Regulations

- H. Only electric grills are allowed on the balconies.
- I. The management office will notify the resident of any violation, allowing five (5) business days to correct the problem. After five (5) business days, a fine of up to \$10.00 per day will be levied until corrective action is taken.

XVII. TRASH AND RECYCLING

- A. Trash must be bagged and secured in 13-gallon tall kitchen trash bags before being placed in the trash chute. Do not leave trash on the floor in the trash room or on the ground besides the dumpster or recycling bins.
- B. Trash may be deposited in the chute only between the hours of 7:00 a.m. and 9:00 p.m. daily.
- C. Boxes, breakable items including glass containers and bottles, and items too large or long to fit into proper trash bags must be carried to the dumpster or recycling bins located outside the service entrance.
- D. Boxes must be flattened and carried to the box recycling area next to the dumpsters. If boxes are not flattened, the city will not remove them from the premises.
- E. Cooking oils and grease should be collected in a disposable container and placed in the trash to avoid clogging kitchen drains.
- F. Drano and other products corrosive to pipes may not be used to unclog drains. Residents must call their own plumber to make repairs on their sinks, toilets, and drains.
- G. Residents may not leave furniture, mattresses or other large items they wish to discard in the loading dock area. Consult management for the proper procedure to have these items removed from your unit or arrange for private removal of the items to a dump/recycling site.

XVIII. GUESTS AND RENTERS

- A. Unaccompanied guests and all workers must *sign in* prior to being allowed into residential areas of the building each time they visit.
- B. If the security officer on duty has not been notified by a resident to allow guests to proceed to their unit, the security officer must call and speak with the resident when a guest arrives. Identification may be required of visitors. No visitor will be allowed to proceed to the residential floors without specific permission from the resident.

Middleborough Property Regime – Rules and Regulations

- C. Co-owners electing to rent their units must arrange for the transfer of unit keys, fobs, gate remotes, list of rental rules, and other rental accoutrements directly from the co-owner to the guest/renter. The security officer is not a hotel concierge and is prohibited from assisting renters by acting as an intermediary.
- D. All of the rules and regulations that are in effect for co-owners apply to guests and renters with regard to noise, odors, parking, and comportment.
- E. The use of the swimming pool is off limits for guests and renters who do not have a key fob registered in their name unless the co-owner is present in the pool area with the guest.
- F. All renters are prohibited from sub-letting their unit unless authorized by the co-owner.
- G. Accommodation rentals are prohibited, and residential units may only be used for residential purposes.

XIX. COMMUNICATIONS POLICY

- A. The management office uses an email hosting service to keep residents up-to-date on policy changes, amendments to the rules and regulations, emergency conditions in the building or on the property, and reminders of meetings. It is up to each resident to authorize the use of their email address in order to participate in this service. Authorization is given when the email address is included on the Directory Form each resident must fill out when moving into the building.
- B. Paper notices are posted on enclosed announcement boards outside the management office, at the mailboxes, and on the ground floor near the laundry room.
- C. Notice of the annual meeting and any special meetings will be mailed to the co-owner of record at the time of the mailing.

XX. MISCELLANEOUS

- A. Middleborough uses an exterminating company to treat on a quarterly basis the residential units, common areas, and commercial spaces in the building. The quarterly inspection and treatment are designed to prevent insect infestation. Residents must inform the management office if they wish to opt out of treatment, and if they wish to make alternate arrangements for a private company to treat their unit.

Middleborough Property Regime – Rules and Regulations

- B. Any pest infestation should be reported to management as quickly as possible so that the appropriate steps may be taken to limit the spread of the problem.
- C. Each resident must equip their unit with working smoke detectors as dictated by the Fire Marshall.
- D. Insurance: The Regime's insurance does not cover the interior surfaces, the contents and improvements, or liability issues for individual units. Residents are responsible for obtaining a condominium unit owners policy (also known as an HO-6 policy) for their respective units. This policy should include adequate property, personal property and liability coverage as determined by the unit owner's insurance agent in accordance with Article IX, Section G of the Middleborough Bylaws which states:

Insurance by Co-owners. Each Co-owner shall be responsible for obtaining such amounts of the following types of insurance as he deems necessary or desirable:

- 1. Hazard insurance on his Apartment for his own benefit;**
- 2. Hazard insurance on the contents of his Apartment and on improvements made to his Apartment; and**
- 3. Liability insurance covering accidents occurring within his Apartment**

Any Co-owner who obtains hazard insurance on his Apartment for his benefit shall within thirty (30) day of obtaining the same deliver to the Board of Directors a certificate evidencing such policy of insurance.

- E. The Regime further urges owners to include in any coverage a loss provision that is not covered by the Master Policy.
- F. Special Note: Damage to any unit, including water, smoke, or odor, is the responsibility of the resident of the unit from which the problem originates. Any costs to repair damage caused by water, smoke, or odor must be paid by the resident of the unit where the source of the damage originates. For example, if a unit is damaged by water coming from another unit, the resident of the unit from which the problem originates is responsible for all the costs incurred to repair the damaged unit.

Middleborough Property Regime – Rules and Regulations

G. Packages accepted by the security officer on duty must be signed for when the resident picks up the package. Residents will be notified by phone of perishable deliveries so that they may pick up the package as quickly as possible after it is delivered. If a resident knows that a perishable delivery is expected, the resident should notify the security officer to be on the alert for the package.

H. Use of drones and other unmanned motorized aircraft is not allowed above the Middleborough HPR property or in close proximity of the building without prior written management consent. Violation of this rule will result in an assessment fine to the co-owner of the operator's residence.

I. The demand notice for the regime fee, also called the annual assessment, is made at the time the budget is approved by the co-owners at the annual meeting. Payment may be made annually, semi-annually, quarterly, or monthly. A separate demand letter is not required except for assessments that are in addition to the annual regime fee. The late fee and penalty structure associated with late payments is outlined in the Bylaws

J. Discharge of firearms, BB guns, air guns, and fireworks is not permitted on the premises.

XXI. SHORT TERM RENTALS

A. Pursuant to its authority granted by Article II of the Association Bylaws, the Board of Directors has concluded that the offering of rental of any (residential) unit for a term of less than thirty (30) days shall be deemed a non-residential use of the property and prohibited. For purposes of this resolution, "non-residential" shall be defined as the offering, advertising, using or renting of a unit as a lodging establishment for the purpose of collecting rent or remuneration for a period of thirty days or less. This prohibition specifically applies to AirBNBs, VRBOs or any similar service or advertising vehicle that markets rentals for less than thirty (30) days.

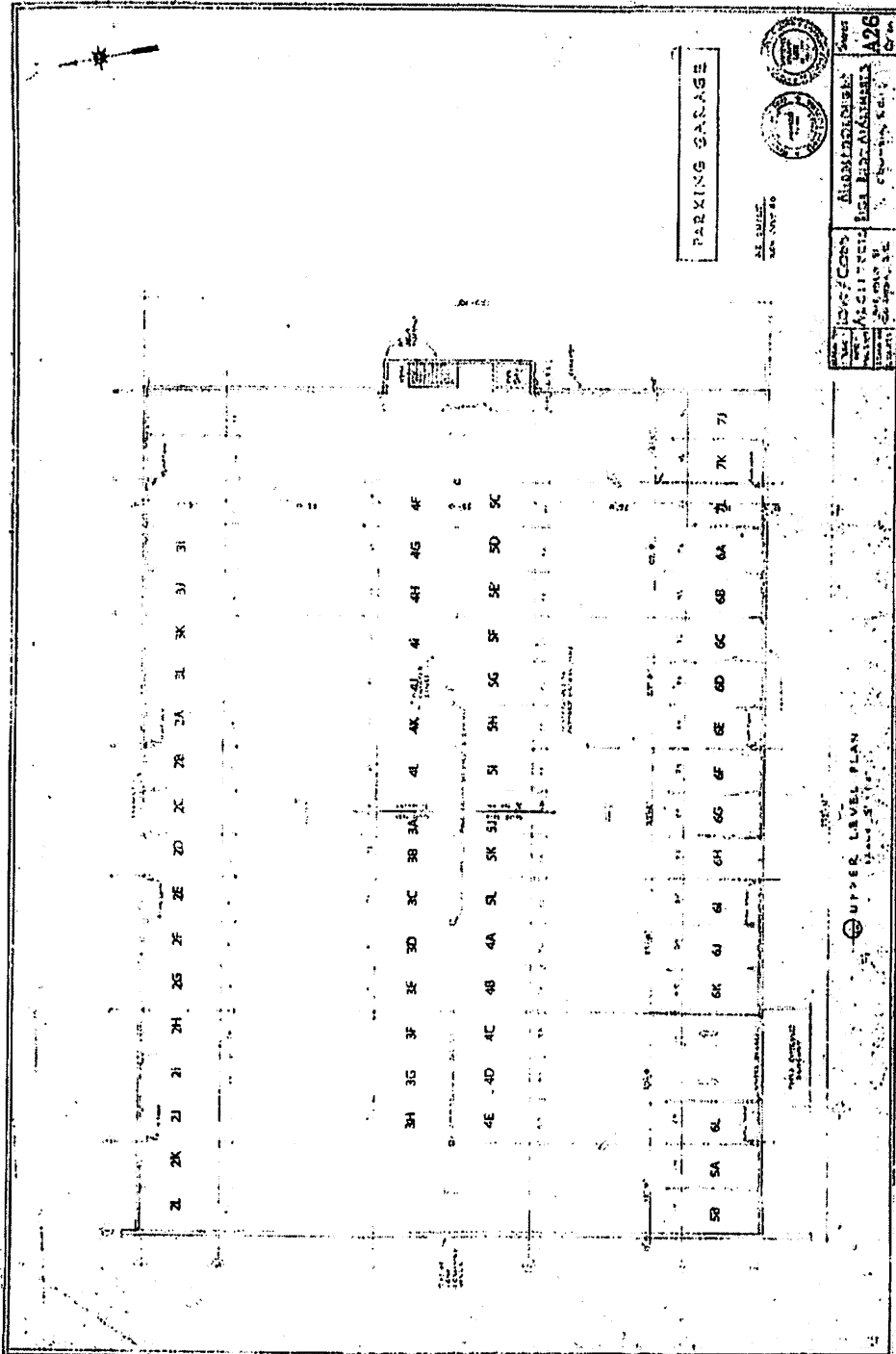
B. For each violation of this Regulation, a fine of \$10 per day as stipulated in the Bylaws shall be imposed.

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Middleborough Property Regime – Rules and Regulations

XXII. GARAGE SITE PLANS

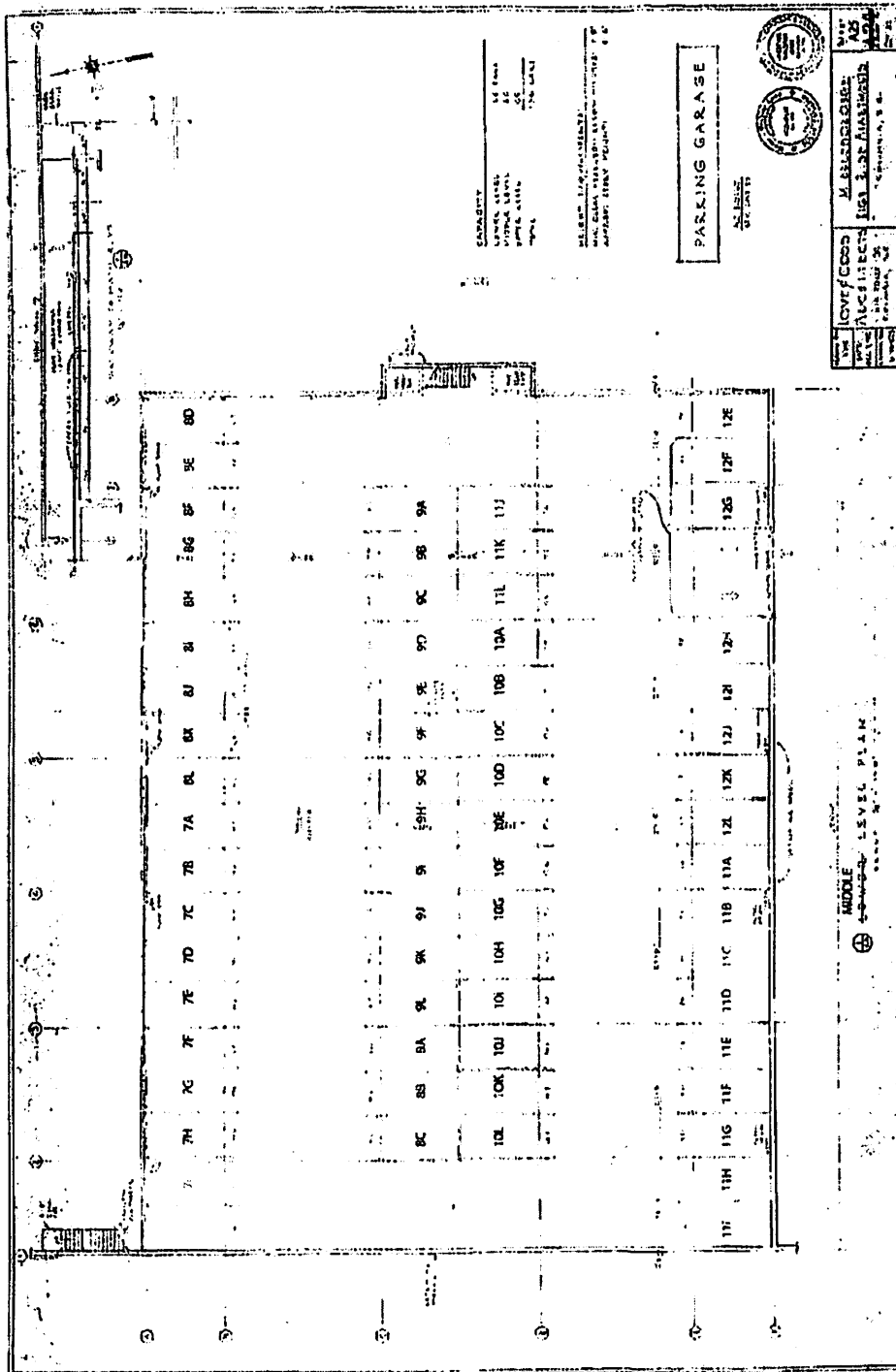
A. Upper Level Plan



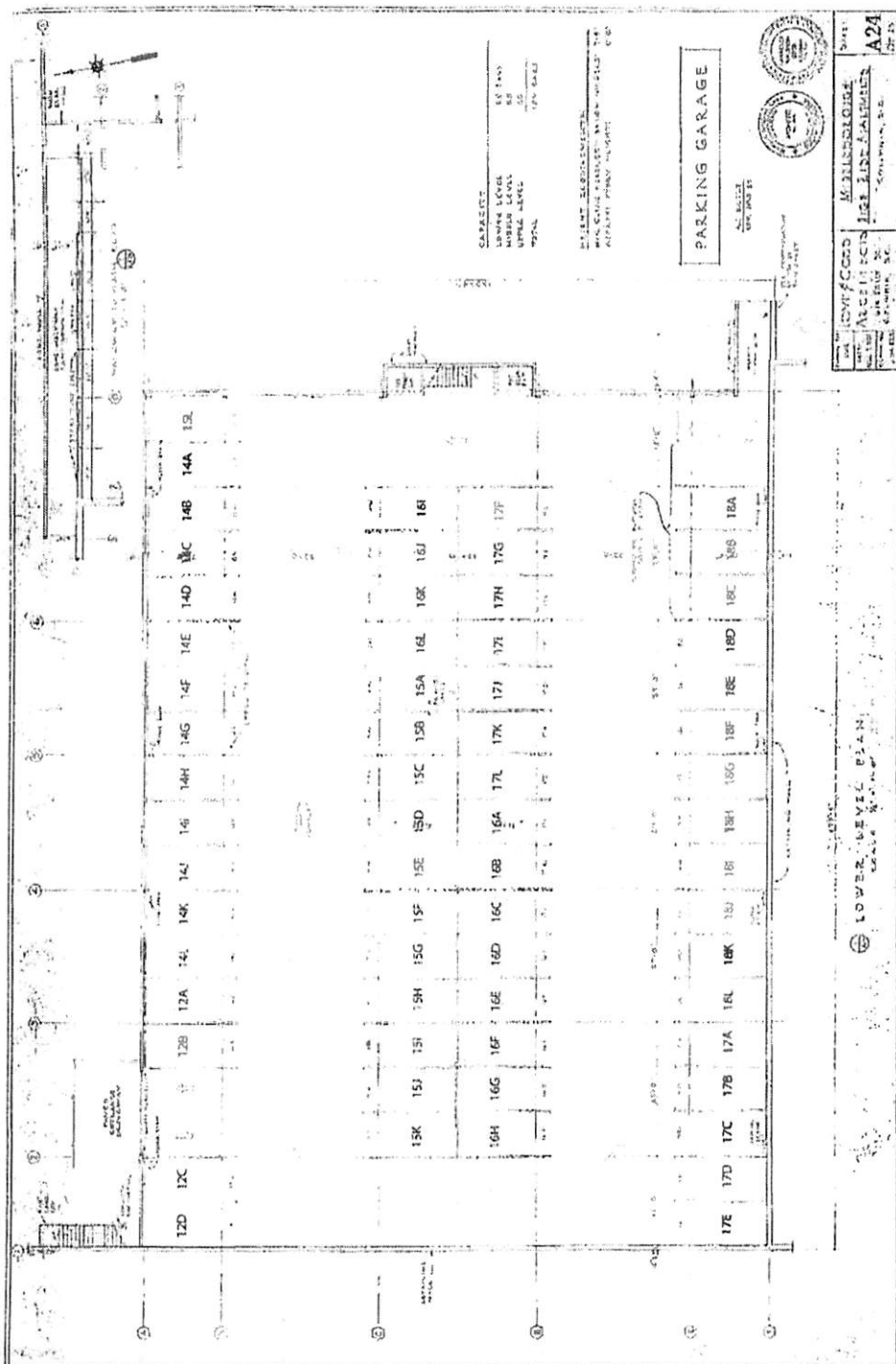
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Middleborough Property Regime – Rules and Regulations

B. Middle Level Plan



C. Lower Level Plan



File, Search, and Retrieve Documents Electronically

Corporate Information

Entity Type: Limited Liability Company

Status: Good Standing

Domestic/Foreign: Domestic

Incorporated State: South Carolina

Important Dates

Effective Date: 03/24/2016

Expiration Date: N/A

Term End Date: N/A

Dissolved Date: N/A

Registered Agent

Agent: KEVIN P. O'HARA

Address: 66 LAGARE ST.
CHARLESTON, South Carolina 29401

Official Documents On File

Filing Type	Filing Date
Organization	03/24/2016

May 09 2019
REFERENCE ID: 331638

Mark Hammond
SECRETARY OF STATE

**STATE OF SOUTH CAROLINA
SECRETARY OF STATE
ARTICLES OF ORGANIZATION
Limited Liability Company -- Domestic
Filing Fee - \$110.00**

TYPE OR PRINT CLEARLY IN BLACK INK

The undersigned delivers the following articles of organization to form a South Carolina limited liability company pursuant to S.C. Code of Laws §33-44-202 and §33-44-203.

1. The name of the limited liability company (Company ending must be included in name*)

Krebone Enterprises LLC

***NOTE: The name of the limited liability company must contain one of the following endings: "limited liability company" or "limited company" or the abbreviation "L.L.C.", "LLC", "L.C.", "LC", or "Ltd. Co."**

2. The address of the initial designated office of the limited liability company in South Carolina is

66 Legare St.

Street Address

Charleston

29204

City

Zip Code

3. The initial agent for service of process is

Kevin P. O'Hara

Name

Kevin P. O'Hara
Signature of Agent

and the street address in South Carolina for this initial agent for service of process is

66 Legare St.

Street Address

Charleston

29401

City

Zip Code

4. List the name and address of each organizer. Only one organizer is required, but you may have more than one.

(a) Kevin P. O'Hara

Name

66 Legare St.

Street Address

Charleston

SC

29401

City

State

Zip Code

(b) Rebekah H. O'Hara

Name

66 Legare St.

Street Address

Charleston

SC

29401

City

Zip Code

160329-0072

FILED: 03/24/2016

KREBONE ENTERPRISES, LLC

Filing Fee: \$110.00 ORIG



Mark Hammond

South Carolina Secretary of State

Form Revised by South Carolina
Secretary of State, July 2012

May 09 2019
REFERENCE ID: 331638

Name of Limited Liability Company Krebone Enterprises LLC

Mark Hammond
Secretary of State

5. ☐ Check this box only if the company is to be a term company. If the company is a term company, provide the term specified. _____
6. ☒ Check this box only if management of the limited liability company is vested in a manager or managers. If this company is to be managed by managers, include the name and address of each initial manager.
- (a) **Kevin P. O'Hara**
- | | | |
|----------------|-------|----------|
| Name | | |
| 66 Legare St. | | |
| Street Address | | |
| Charleston | SC | 29401 |
| City | State | Zip Code |
- (b) **Rebekah H. O'Hara**
- | | | |
|----------------|-------|----------|
| Name | | |
| 66 Legare St. | | |
| Street Address | | |
| Charleston | SC | 29401 |
| City | State | Zip Code |
7. ☐ Check this box only if one or more of the members of the company are to be liable for its debts and obligations under §33-44-303(c). If one or more members are so liable, specify which members, and for which debts, obligations or liabilities such members are liable in their capacity as members. This provision is optional and does not have to be completed.
8. Unless a delayed effective date is specified, these articles will be effective when endorsed for filing by the Secretary of State. Specify any delayed effective date and time.

9. Any other provisions not inconsistent with law which the organizers determine to include, including any provisions that are required or are permitted to be set forth in the limited liability company operating agreement may be included on a separate attachment. Please make reference to this section if you include a separate attachment.
10. Each organizer listed under number 4 must sign.

[Signature]
Signature of Organizer

3/21/16

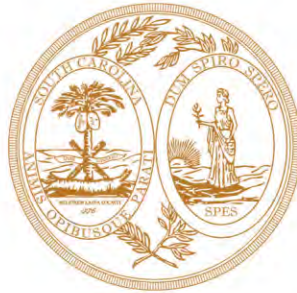
Date

Rebekah O'Hara
Signature of Organizer

3/21/16

Date

The State of South Carolina



Office of Secretary of State Mark Hammond

Certificate of Existence

I, Mark Hammond, Secretary of State of South Carolina Hereby Certify that:

KREBONE ENTERPRISES, LLC, a limited liability company duly organized under the laws of the State of South Carolina on March 24th, 2016, with a duration that is at will, has as of this date filed all reports due this office, paid all fees, taxes and penalties owed to the State, that the Secretary of State has not mailed notice to the company that it is subject to being dissolved by administrative action pursuant to S.C. Code Ann. §33-44-809, and that the company has not filed articles of termination as of the date hereof.

Given under my Hand and the Great Seal
of the State of South Carolina this 9th day
of May, 2019.


Mark Hammond, Secretary of State

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Kevin O'Hara • 2nd

President & CEO at Colite Technologies

Columbia, South Carolina

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Colite Technologies

University of South Carolina-Columbia

See contact info

500+ connections

Seasoned executive with a proven entrepreneurial track record in leading business startup and aggressive growth operations for one of the largest Fortune Global 500 companies. Demonstrated leadership both domestically and internationally with a keen ability to recognize market opportunities and translate them into business models. Alliance builder both internally and externally able to sell vision at the factory floor level as well as in the board room.

Specialties: Strategic thinker
Financial analysis and modeling
Extreme customer focus
Ability to recognize and develop talent
Internal and external alliance builder
Continuous personal growth
Full P&L Experience
Skilled communicator
Relentless drive for operational excellence

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Highlights

4 Mutual Connections

You and Kevin both know Will Holmes, Joe Huggins, and 2 others

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People Also Viewed

Evans Harding • 2nd
Operations Planning Manager at Colite

Joe Fox • 3rd
Director, Power Market at Ulteig

Michelle Meyer • 3rd
Director of Marketing at Greenlots

Lydia Miller • 3rd
Vice President of Sales, Mid-South at Colite Technologies

Ken Waters • 3rd
Product Manager at Advanced Control Systems

Fei Deyle • 3rd
CEO of Lollipop, Inc.

Dave Kuriger • 3rd
CFO at North American T&D Group & Advanced Control System

Sherri Moss • 3rd
Customer Service Supervisor at Splintek Inc. (SleepRight)

Lynn Chapman Greene • 3rd
Manager/CEO at Lucky Corridor, LLC

Carl Westerhold • 3rd
Owner at uBreakiFix Raleigh B & Durham Southpoint



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President & CEO
 Colite Technologies
 Dec 2017 – Present · 1 yr 6 mos
 Columbia, South Carolina Area

Leading business start up activities for technology company focused on renewable energy and energy efficient lighting



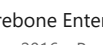
Colite Technologies |
 Rethink Renewable...

President
 Krebone Enterprises, LLC
 May 2016 – Present · 3 yrs 1 mo
 Columbia, South Carolina Area

Investing in and managing a portfolio of real estate assets focused on short-term residential rental markets in North Carolina, Georgia, and South Carolina.


Executive VP, Strategy Sales & Marketing
 Advanced Control Systems
 Dec 2014 – Apr 2016 · 1 yr 5 mos
 Norcross, Ga

Develop and execute strategy and up front sales and marketing processes for new owner Falfurrias Venture Partners.


Siemens Industry US
 11 yrs 8 mos

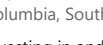
- VP Operations, Smart Grid Division**
 Oct 2012 – Nov 2014 · 2 yrs 2 mos
 Wendell, NC

Drive operational performance of all Smart Grid Division project business while managing P&L for Service and Automation Business Units.
- VP & GM, Transmission and Distribution Services**
 Apr 2003 – Sep 2012 · 9 yrs 6 mos
 Wendell, NC

Launched and grew a business focused on delivering electrical T&D technology based services to the US and Canada electric utility markets.

Manager, Strategic Marketing,
 Siemens Power Generation, Inc.
 Oct 1999 – Apr 2003 · 3 yrs 7 mos

Orlando, Fl, Erlangen & Muelheim, Germany - Part of a select group tasked to drive global integration of power generation services following Siemens' acquisition of Westinghouse.


Sr. Consultant, Energy Practice
 Navigant Consulting

Entrepreneurship: Bootstrapping Your Business
 Viewers: 11,989

Developing a Comp Strategy
 Viewers: 59,630

Reid Hoffman and C Yeh on Blitzscaling
 Viewers: 4,272

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• Assisted in launching a service providing profiles and value characteristics for US generation assets.... See more

Sr. Sales Engineer

Westinghouse Electric Corp

Apr 1990 – Nov 1997 · 7 yrs 8 mos

Various positions from Marketing Projects to Account Manager leading all sales activities at a large US Electric Utility.



Manager, Industrial Engineering

UPS

Jan 1985 – Jan 1990 · 5 yrs 1 mo

Columbia SC

Jan 1985 - Mar 1986 - Progression within hourly hub operations

Mar 1986 - July 1989 - Part-time management, hub operation and industrial engineering

July 1989 - Jan 1990 - Package delivery

Show fewer experiences

Education



University of South Carolina-Columbia

Bachelor of Science (BS), Electrical Engineering

1984 – 1989



The University of Tennessee at Chattanooga

Master of Business Administration (MBA), Finance, General, 4.0

1994 – 1997

Activities and Societies: Beta Gamma Sigma National Honor Society President, Financial Management Association, UTC Chapter; FMA National Honor Society International Cooperative Education Program, Australia, December 1996-January 1997

Skills & Endorsements

Energy · 32

Endorsed by Kevin Sullivan and 9 others who are highly skilled at this

Endorsed by 20 of Kevin's colleagues at Siemens

Leadership · 27

Endorsed by 2 of Kevin's colleagues at Advanced Control Systems

Endorsed by 9 people who know Leadership

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https://www.linkedin.com/in/kevin-o-hara-9770519/

R-228

Exhibit 6 __Page 3 of 4

3/4

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highly skilled at this

Control Systems

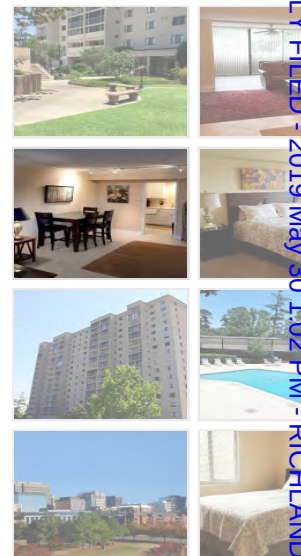
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Extended stay rental in Columbia, S.C.

Our Middleborough apartment is the perfect rental space, whether you need a place for a weeklong conference or transitional housing for a professional.



Check rates & availability

View apartment availability, make a reservation or pay for your rental.

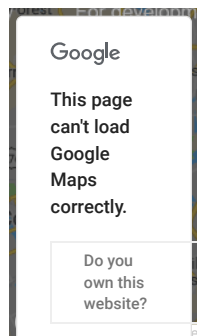
Go

2J Middleborough

1825 St. Julian Place, Columbia, SC

Centrally located in a Forest Acres high-rise, our apartment features a master bedroom with a private bath, a second bedroom and bath, a spacious living area and a full kitchen. The building has 24-hr security with helpful staff on site. The landscaped grounds include a full-size pool and residents have access to the gym and laundry facilities. Flexible leasing options make this a great choice for temporary stays.

Where we are





Extended stay rental in Columbia, S.C.

Our Middleborough apartment is the perfect rental space, whether you need a place for a weeklong conference or transitional housing for a professional.



Check rates & availability

View apartment availability, make a reservation or pay for your rental.

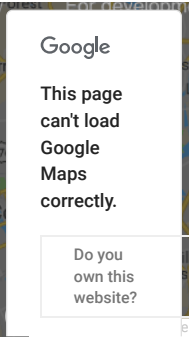
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2J Middleborough

1825 St. Julian Place, Columbia, SC

Centrally located in a Forest Acres high-rise, our apartment features a master bedroom with a private bath, a second bedroom and bath, a spacious living area and a full kitchen. The building has 24-hr security with helpful staff on site. The landscaped grounds include a full-size pool and residents have access to the gym and laundry facilities. Flexible leasing options make this a great choice for temporary stays.

Where we are



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Contact us to make reservation

Days booked are shown in pink on the calendar. This property has flexible leasing options:

Year Lease (without utilities) \$1300 per month.

Monthly rental (with utilities*) \$1800 per month.

Weekly rental (with utilities*) \$600 per week.

To make a reservation, contact us using the form below. Once we've responded to your request, you can pay for your stay via the Paypal option on this page, using the amount specified in the confirmation email. Thank you!

*Utilities included: Cable, internet, electricity, water

Availability

May ▼

2019 ▼

M	T	W	T	F	S	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

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Submit amount below ▼

Other Amount:

Pay Now



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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Kevin O'Hara and Rebekah H. O'Hara,

Plaintiff-Petitioner,

v.

Middleborough Horizontal Property
Regime,

Defendant-Respondent.

Middleborough Horizontal Property
Regime,

Third-Party Plaintiff,

v.

Krebone Enterprises, LLC,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2019-CP-40-01231

**PLAINTIFF-PETITIONER AND
KREBONE ENTERPRISES, LLC'S
ANSWER TO DEFENDANT-
RESPONDENT'S ANSWER,
COUNTERCLAIM, AND THIRD-
PARTY COMPLAINT**

The Plaintiff-Petitioners, Kevin O'Hara and Rebekah O'Hara ("the O'Haras"), and the Third-Party Defendant, Krebone Enterprises, LLC ("Krebone") answer the Defendant-Respondent's, Middleborough Horizontal Property Regime ("Middleborough"), answer, counterclaim, and third-party complaint herein as follows:

FOR A FIRST DEFENSE
(General Denial)

1. All allegations of Defendant-Respondent's Answer, Counterclaim, and Third-Party Complaint not specifically admitted herein are specifically denied, and strict proof thereof is demanded.

FOR A SECOND DEFENSE
(Specific Denial)

2. Paragraphs 1 through 23 contain the Defendant-Respondent's responses and legal conclusions to which no response is required. To the extent a response is required, the O'Haras and Krebone deny the allegations of Paragraphs 1 through 23. Any other allegations or characterizations are denied.
3. The O'Haras and Krebone deny the allegations contained in Paragraph 24 of Defendant-Respondent's Counterclaim.
4. Paragraph 25 does not make any allegations against the O'Haras and/or Krebone; to the extent that Paragraph 25 may be construed to have allegations against the O'Haras and/or Krebone, the allegations of Paragraph 25 are denied. Any other allegations or characterizations are denied.
5. Paragraph 26 does not make any allegations against the O'Haras and/or Krebone; to the extent that Paragraph 26 may be construed to have allegations against the O'Haras and/or Krebone, the allegations of Paragraph 26 are denied. Any other allegations or characterizations are denied.
6. Paragraph 27 does not make any allegations against the O'Haras and/or Krebone; to the extent that Paragraph 27 may be construed to have allegations against the O'Haras and/or Krebone, the allegations of Paragraph 27 are denied. Any other allegations or characterizations are denied.
7. Paragraph 28 contains legal conclusions to which no response is required. To the extent a response is required, the allegations of Paragraph 28 are denied. Any other allegations or characterizations are denied.

8. The O'Haras and Krebone admit the allegations contained in Paragraphs 29 and 30 of Defendant-Respondent's Answer, Counterclaim, and Third-Party Complaint.
9. The O'Haras and Krebone admit the allegations contained in Paragraph 31 to the extent the Defendant's administration is governed by the Bylaws. The O'Haras and Krebone deny that the document contained in Defendant's Exhibit 3 is a true and correct copy of the binding Bylaws. Any other allegations or characterizations are denied.
10. The O'Haras and Krebone admit the allegations contained in Paragraph 32 of Defendant-Respondent's Answer, Counterclaim, and Third-Party Complaint.
11. The O'Haras and Krebone admit the allegations contained in Paragraph 33 of Defendant-Respondent's Answer, Counterclaim, and Third-Party Complaint.
12. The O'Haras and Krebone admit the allegations contained in Paragraph 34 of Defendant-Respondent's Answer, Counterclaim, and Third-Party Complaint to the extent that the Charleston, South Carolina, address was and continues to be the official address of Krebone Enterprises. Any other allegations or characterizations are denied.
13. The O'Haras and Krebone admit the allegations contained in Paragraph 35 of Defendant-Respondent's Answer, Counterclaim, and Third-Party Complaint.
14. The O'Haras and Krebone admit the allegations contained in Paragraph 36 of Defendant-Respondent's Answer, Counterclaim, and Third-Party Complaint to the extent that the website referenced in Defendant's Exhibit 7 was created in 2016 and has not been used or accessed by the O'Haras or Krebone since the website's creation nor has it been used to book any reservations. Any other allegations or characterizations are denied.

15. Answering the allegations of Paragraph 37, the O'Haras and Krebone crave reference to the Master Deed and S.C. Code Annotated § 27-31-170 and deny any allegations inconsistent therewith.
16. Answering the allegations of Paragraph 38, the O'Haras and Krebone crave reference to the Master Deed and deny any allegations inconsistent therewith.
17. No response is required as to Paragraph 39 of Defendant-Respondent's Answer, Counterclaim, and Third-Party Complaint. To the extent a response is required, the allegations of Paragraph 39 are denied and any changes to the Bylaws in contravention to the Master Deed are not binding.
18. Responding to the allegations of Paragraph 40, the O'Haras and Krebone deny that Defendant-Respondent was authorized to enact the Regulations, and any other allegations or characterizations are denied.
19. No response is required as to Paragraph 41 of Defendant-Respondent's Answer, Counterclaim, and Third-Party Complaint. To the extent a response is required, the allegations of Paragraph 41 are denied and any changes to the Bylaws in contravention to the Master Deed are not binding.
20. Paragraph 42 contains legal conclusions to which no response is required. To the extent a response is required, the O'Haras and Krebone deny the allegations of Paragraph 42. Any other allegations or characterizations are denied.
21. Paragraph 43 contains legal conclusions to which no response is required. To the extent a response is required, the O'Haras and Krebone deny the allegations of Paragraph 43. Any other allegations or characterizations are denied.
22. The O'Haras and Krebone deny the allegations of Paragraph 44.

23. The O'Haras and Krebone deny the allegations of Paragraph 45.
24. Paragraph 46 contains Defendant-Respondent's characterizations of law, to which no response is required. To the extent a response is required, the O'Haras and Krebone admit that the block quote appears to quote the language of S.C. Code Ann. § 45-2-50. Any other allegations or characterizations are denied.
25. Paragraph 47 contains Defendant-Respondent's characterizations of law, to which no response is required. To the extent a response is required, the O'Haras and Krebone admit that the block quote appears to quote the language of South Carolina Municipal Code Chapter 11, Article II, Sec. 11-32, which speaks for itself. Any other allegations or characterizations are denied.
26. The O'Haras and Krebone deny the allegations of Paragraph 48.
27. Paragraph 49 contains Defendant-Respondent's characterizations of Section 20-32 of the Tourism Development Fee Ordinance, to which no response is required. To the extent a response is required, the O'Haras and Krebone admit that Paragraph 49 appears to characterize Section 20-32 of the Tourism Development Fee Ordinance, which speaks for itself. Any other allegations or characterizations are denied.
28. Paragraph 50 contains Defendant-Respondent's characterizations of the South Carolina Municipal Code, to which no response is required. To the extent a response is required, the O'Haras and Krebone admit that the block quote appears to quote the language of Chapter 11, Article X, Section 11-503, which speaks for itself. Any other allegations or characterizations are denied.
29. Paragraph 51 contains Defendant-Respondent's characterizations of the South Carolina Municipal Code, to which no response is required. To the extent a response is required,

- the O'Haras and Krebone admit that the block quote appears to quote the language of Chapter 11, Article II, Section 11-31, which speaks for itself. Any other allegations or characterizations are denied.
30. Answering the allegations of Paragraph 52, the O'Haras and Krebone are without sufficient information to admit or deny the allegations.
31. Paragraph 53 contains Defendant-Respondent's characterizations of the South Carolina Municipal Code, to which no response is required. To the extent a response is required, the O'Haras and Krebone admit that the sentence appears to characterize a portion of the Business License Ordinance. Any other allegations or characterizations are denied.
32. Paragraph 54 contains Defendant-Respondent's characterizations of the South Carolina Municipal Code, to which no response is required. To the extent a response is required, the O'Haras and Krebone admit that the block quote appears to quote the language of Section 11-32 of the Business Licensure Ordinance, which speaks for itself. Any other allegations or characterizations are denied.
33. The O'Haras and Krebone deny the allegations of Paragraph 55.
34. Paragraph 56 contains Defendant-Respondent's characterizations of the Americans with Disabilities Act (ADA), to which no response is required. To the extent a response is required, the O'Haras and Krebone admit that the block quote appears to quote the language of Section 36.104 of the ADA, which speaks for itself. Any other allegations or characterizations are denied.
35. Paragraph 57 contains Defendant-Respondent's characterizations of the ADA, to which no response is required. To the extent a response is required, the O'Haras and Krebone

admit that the block quote appears to quote the language of Section 36.201 of the ADA, which speaks for itself. Any other allegations or characterizations are denied.

36. The O'Haras and Krebone deny the allegations of Paragraph 58.

37. The O'Haras and Krebone deny the allegations of Paragraph 59.

38. Paragraphs 60 through 66 contains the Defendant-Respondent's responses and legal conclusions to which no response is required. To the extent a response is required, the O'Haras and Krebone deny the allegations of Paragraphs 60 through 66.

39. Paragraph 67 contains legal conclusions to which no response is required. To the extent a response is required, the O'Haras and Krebone admit the allegations of Paragraph 67 appear to characterize the law of restrictive covenants. Any other allegations or characterizations are denied.

40. The O'Haras and Krebone deny the allegations of Paragraph 68.

41. The O'Haras and Krebone deny the allegations of Paragraph 69.

42. The O'Haras and Krebone deny the allegations of Paragraph 70.

43. No response is required of the O'Haras and/or Krebone as to Paragraph 71 of Defendant-Respondent's Answer, Counterclaim, and Third-Party Complaint.

44. Paragraph 72 contains legal conclusions to which no response is required. To the extent a response is required, the O'Haras and Krebone admit the allegations of Paragraph 72 appear to characterize the law of restrictive covenants. Any other allegations or characterizations are denied.

45. The O'Haras and Krebone deny the allegations of Paragraphs 73.

46. Paragraphs 74 and 75 contain the Defendant-Respondent's responses and legal conclusions to which no response is required. To the extent a response is required, the

O'Haras and Krebone deny the allegations of Paragraphs 74 and 75. Any other allegations or characterizations are denied.

47. No response is required of the O'Haras and/or Krebone as to Paragraph 76 of Defendant-Respondent's Answer and Counterclaim.

48. The allegations contained in Paragraph 77 are admitted only to the extent that the Master Deed represents a valid agreement between the parties and any changes to the Bylaws in contravention to the Master Deed are not binding. Any other allegations or characterizations are denied.

49. The O'Haras and Krebone deny the allegations contained in Paragraphs 78, 79, and 80 of Defendant-Respondent's Answer, Counterclaim, and Third-Party Complaint.

FOR A THIRD DEFENSE

50. Defendant's counterclaims are barred, in whole or in part, by one or more of the doctrines of laches, estoppel, unclean hands, or waiver.

WHEREFORE, the O'Haras and Krebone prays for an Order restraining and enjoining Middleborough from prohibiting the O'Haras from renting their units on short-term leases and interfering with the O'Haras tenants' rights to use the common areas in the same manner as all other co-owners or tenants and otherwise violating the Master Deed regarding any restrictions on the O'Haras' leases not set forth in the Master Deed. Pending a hearing on the merits of this Petition, Petitioner prays for a temporary restraining order and preliminary injunction restraining and enjoining Middleborough from unlawfully prohibiting the O'Haras and their tenants the full and lawful use of the unit and the common elements in any manner different from that of other co-owners or tenants as allowed by the Master Deed. The Petitioner further prays that this Court enter

a declaratory judgment declaring that any restrictions or limitations on leases not specifically set forth in the Master Deed are not enforceable, and are a violation of law, including limitations as to the use of the common areas, the security guard, and other assets of the property in a manner different from that of all other co-owners and tenants, and that the O'Haras may continue to lease their property as short-term rentals and that their tenants may enjoy the property in the same manner as other residents.

BRUNER, POWELL, WALL & MULLINS, LLC

s/ Wesley D. Peel

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Columbia, South Carolina

July 1, 2019

1 STATE OF SOUTH CAROLINA

2 COURT OF COMMON PLEAS

3 COUNTY OF RICHLAND

4 -----x
5 KEVIN O'HARA, REBEKAH H.)

6 O'HARA, and KREBONE)

7 ENTERPRISES, LLC,)

8 Plaintiffs,)

9 vs.)

10 MIDDLEBOROUGH HORIZONTAL)

11 PROPERTY REGIME,)

12 Defendant.)

13 -----x

14 January 29, 2021
15 Virtual Courtroom

16 B E F O R E:

17 The Honorable Kristi F. Curtis, Presiding Judge

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

19 Wesley D. Peel, Esq.

20 Attorney for the Plaintiffs

21 Kirby D. Shealy, III, Esq.

22 Christian Saville, Esq.

23 Attorney for the Defendant

24 Transcribed by Bobbi Fisher, RPR, for DCRP, Digital

25 Courtroom Project

I N D E X

WITNESS	PAGE
KEVIN O'HARA	
Direct by Mr. Peel	6
Cross by Mr. Saville	33
KENNETH BAKER	
Direct by Mr. Saville	54
Cross by Mr. Peel	60
Redirect by Mr. Saville	67

E X H I B I T S

(Exhibits on file in the Clerk's Office.)

EXHIBIT	MKD	RCD
1 Deed of Unit 2-J	5	5
2 Deed of Unit 14-D	5	5
3 Master Deed	5	5
5 Bylaws	5	5
6 Rental Permit	5	5
8 2016 Letter	5	5
10 January 2019 Rules	5	5
16 LinkedIn Page	5	5
18 2017 P&L Statement	5	5

P R O C E E D I N G S

(Whereupon, the following proceedings started at 1:00 p.m.)

THE COURT: This is Case 2019-CP-40-01231. I have read the pre-trial briefs and I have taken a look at the exhibits as well. I'm going to turn it over to you, Mr. Peel, to get us started.

MR. PEEL: Okay, Your Honor. Do you want brief opening or would you like us to proceed with testimony?

THE COURT: Again, I have read your brief, but if you want to do a brief opening, that would be fine.

MR. PEEL: Okay. Your Honor, just very simple. My client, Mr. Kevin O'Hara, and his wife bought two units in the Middleborough condominiums that are right here behind my office in the high-rise for the purpose of renting them both for long-term and short-term for one night, two nights a week, and he has done that for a period of time. The board at Middleborough at some point raised objections, gave them cease and desist letters, and told him that he needed to quit doing that. We believe it's a violation of the master deed.

(Indiscernible) property in that. So Mr. O'Hara brought this action to get a declaration that the rule changes that are made trying to prevent him to rent these units in the manner that he wishes, in the terms that he wishes, is against state law and the master deed and the other contractual documents related to his property purchase.

1 THE COURT: Okay. You can call your first witness.

2 Well, let me ask, either Mr. Saville or Mr. Shealy: Do
3 you want to make an opening statement as well?

4 MR. SHEALY: Yes, Your Honor, very briefly. And I just
5 want to clarify for the Court that I don't think there's any
6 debate that the O'Haras are renting out the unit on a one or
7 two-night basis, very frequently, essentially like a hotel.

8 I do want to make a note that Middleborough is not
9 relying on some recently passed rule change or regulation as
10 the basis as to why this conduct is prohibited. It's actually
11 in the exhibit to the master deed, in the bylaws. Exhibit D
12 to the master deed actually provides that apartments in Phase
13 1 shall be used only as residences. Apartments in Phase 1
14 shall be used only as residences. And that was recorded,
15 along with the master deed, as an exhibit, and that is just
16 apparently not what the apartments are being used for. The
17 O'Hara's properties are in Phase 1. And that's all I have to
18 offer before the testimony, Your Honor. Thank you.

19 THE COURT: Thank you.

20 Okay, Mr. Peel. Turning it over to you.

21 MR. PEEL: Thank you, Your Honor. Just as a matter of
22 housekeeping, this is my first Webex trial, so is it easier --
23 do you have the exhibits that are easy -- would you prefer I
24 share them on the screen or is it just easier for me to just
25 reference them for you?

1 THE COURT: I think it's fine for you to reference them,
2 since we have all been given a copy of the exhibits. They
3 have all circulated back to the joint (indiscernible).
4 Everybody should be familiar with what you're referring to.

5 MR. PEEL: Okay.

6 THE COURT: I have no problem with that.

7 MR. PEEL: Okay. Well, I think we have an agreement
8 between Mr. Shealy and Mr. Saville and myself that all
9 exhibits we have agreed to and they should be admitted as
10 submitted to the Court.

11 THE COURT: And I meant to print out the joint exhibit
12 list but you have Exhibits 1 through --

13 MR. PEEL: 18, I believe.

14 THE COURT: Okay. Any objection, Mr. Saville, to Joint
15 Exhibits 1 through 18 being admitted into evidence?

16 MR. SAVILLE: No, Your Honor. Thank you.

17 THE COURT: Okay. Then 1 through 18 will be admitted.

18 (Joint Exhibits 1 through 18 were marked for
19 identification and received into evidence.)

20 MR. PEEL: Thank you, Your Honor. I'd call my first
21 witness, Mr. Kevin O'Hara.

22 THE COURT: Okay. Mr. O'Hara, sir, I'm Judge Curtis.
23 Can I get you to raise your right hand for me, please.

24 KEVIN O'HARA,
25 the witness, after having been duly sworn, was examined and

1 testified to as follows:

2 THE COURT: And your name is Kevin O'Hara?

3 THE WITNESS: Yes, Your Honor.

4 THE COURT: Spell your last name, please, for the court
5 reporter.

6 THE WITNESS: O, apostrophe capital H-a-r-a.

7 DIRECT EXAMINATION

8 BY MR. PEEL:

9 Q Thank you, Mr. O'Hara. What do you do for a living?

10 A I run a (indiscernible) company.

11 Q And what did you do before that?

12 A Well, I was briefly retired, and then, before that, I
13 worked for Siemens for many years in the power industry.

14 Q And you have in front of you an exhibit notebook, and I'm
15 going to be referring to them by exhibit numbers as we go
16 through. So I'll do my best to call the numbering and the
17 page that we're talking about as we go.

18 Now, how did you come to -- did you buy some units in
19 Middleborough?

20 A I did.

21 Q How did you find out about them?

22 A I was in the process of making investments to do
23 (indiscernible) long-term rentals, and I was just studying --
24 I was studying real estate ads and run across the units that I
25 ultimately purchased.

1 Q Okay. And why did you buy them?

2 A Because they were very reasonably priced. They were
3 relatively easy to renovate. And I thought I would get a good
4 return on investment.

5 Q And you went on this with your wife?

6 A That's correct.

7 Q And would you turn to Exhibit 1, please. And what is
8 that?

9 A This is deed to the Unit 2-J.

10 Q Is that a unit you currently own?

11 A That's correct.

12 Q Okay. And Exhibit 2, is that another deed?

13 A This is the deed to Unit 14-D, yes.

14 Q And you still own that unit?

15 A Yes.

16 Q And would you turn to Exhibit 3, please. And what is
17 Exhibit 3?

18 A This is the master deed to the Middleborough Regime.

19 Q Did you review this document before you purchased the
20 units?

21 A I absolutely did, because we have been evaluating
22 properties in both Columbia and Atlanta, where we were
23 residing at the time, and we had come across a number of
24 provisions that defined how the property -- how -- what could
25 be executed in certain properties. And so we were very

1 familiar with several of the things to look for, and so we
2 were reviewing to make sure that we could ultimately rent the
3 properties the way we had hoped to.

4 Q How did you hope to?

5 A Well, do short-term and long-term. We'd do anywhere from
6 two days to months.

7 Q And so it was important to you, when purchasing --
8 deciding to purchase these units?

9 A Yes, it was.

10 Q Did you find any restriction on term of lease in the
11 master deed to Middleborough?

12 A No.

13 Q Would you turn to Exhibit -- I'm going to skip Exhibit 4,
14 but would you go to Exhibit 5, please. What are those?

15 A These are the bylaws for the Middleborough Regime.

16 Q And did you review those before you decided to purchase
17 these two units?

18 A Yes, for the same reasons.

19 Q Okay. And so tell me how these rentals worked for these
20 units.

21 A Well, we had them advertised on various rental platforms:
22 Airbnb, VRBO. At one point, we had it also on Trip Advisor,
23 but we stopped that.

24 So they're advertised. There's a calendar. We have a
25 set of rules. We have a contract document that anyone who

1 rents the property has to agree to. They have to agree to the
2 rules. They can rent -- our minimum is two days on 2-J and 30
3 days on 14-G. So anyone can actually, within the availability
4 of the calendar, reserve the property.

5 Once they reserve the property, I get a copy of the
6 signed contract agreement and the rules. Depending on when it
7 is, I tend to send a copy of the rules to the tenants again
8 right before they arrive, a week to two weeks.

9 We have previously left keys with the security desk for
10 people to pick up when they were checking in. We no longer do
11 that because the same rules that we're talking about which
12 were changed in 2019 prohibited that, so we now physically
13 meet each renter, get them to sign in, and give them the keys
14 and the key fob. And then they tend to stay however long it
15 is, and then they check out and we go and prepare it, clean
16 it, get it ready for the next rental.

17 Q Okay. Thank you. And do you have other rental
18 properties, you and Mrs. O'Hara?

19 A We do.

20 Q How many?

21 A Three others.

22 Q Are those houses?

23 A They are houses, yes. But, actually, we have one other
24 short-term rental and two long-term rentals.

25 Q Do you rent those in the same manner?

1 **A** Yes.

2 **Q** Same methods?

3 **A** Well, the rental terms are different, and we advertise
4 those on Zillow. But the short-term is the same, the house.

5 **Q** Okay. And the other -- the entity, this Krebone
6 Enterprises. Can you tell me what Krebone Enterprises is?

7 **A** It's a company that my wife and I formed in 2016. When I
8 first retired, I really didn't have an intention of going back
9 to corporate life, and so we had some ideas on doing some
10 other things business-wise. They didn't pan out. We used
11 Krebone for some renovations. During that period, we also
12 purchased two other units within the Middleborough building.
13 We renovated those and resold it -- sold them. But we used
14 that mostly as a collection entity for the costs and the
15 capital gains that we made on those properties. They were
16 purchased by my wife and I and not the company. It really
17 doesn't do anything now. It's just -- I didn't even file a
18 return in 2019.

19 **Q** It has a website; correct?

20 **A** It had a website. There's really no -- I mean, I
21 scrapped the website before we even used it. We originally
22 had planned to advertise 2-J. We didn't buy 14-G until 2017,
23 but we originally intended to promote 2-J from the website,
24 Krebone Enterprises, but we found out Airbnb and VRBO and it
25 just didn't make any sense. So there's never been a simple

1 transaction conducted under that website.

2 Q Okay. So your original intent with Krebone was to use it
3 as an advertising tool for the rental units?

4 A That's correct.

5 Q And Exhibit 6, if you'd turn to Exhibit 6.

6 THE COURT: Can I interrupt you for just a second? I can
7 hear you fine, but it's a little bit of a muffling quality to
8 your speech. I'm wondering if you can turn your volume down a
9 little bit because it seems, when Mr. O'Hara kind of reaches
10 the end of sentence and gets a little more quiet or sort of
11 trails out, it's actually clearer. His speech is coming
12 across more clearly. And yours as well. So can you try it
13 maybe with your volume down slightly and let's see how that
14 goes.

15 THE WITNESS: I have turned the TV volume down. Is that
16 better?

17 THE COURT: It's about the same.

18 THE WITNESS: I can adjust the input. Let me try that.

19 THE COURT: Okay.

20 THE WITNESS: Is that any better?

21 THE COURT: Not really. It's about the same.

22 THE WITNESS: I would say I would cut my tone down, but
23 that's really hard for me to do.

24 THE COURT: I mean, I can understand you but it is --
25 Mr. Saville, Mr. Shealy, are you getting the same tone?

1 MR. SHEALY: Yes, Your Honor. And I will offer, is
2 there, like, repositioning or volume adjustments that can make
3 it better? What might help is I guess when they speak slowly,
4 it's a little bit easier to make out what's being said, but
5 when they're speaking rapidly, it kind of gets lost in sort of
6 a distortion.

7 MR. PEEL: Your Honor, I'll tell you what I'll do. I
8 have got a conference phone -- a conference call phone that
9 I'll switch my audio over to the call-in and that will
10 probably help. If you'll give me just a second, I'll do that.

11 THE COURT: Let's try it.

12 MR. PEEL: I had to do that with Judge Price just
13 yesterday, so I think I can handle this.

14 THE COURT: There's always more than one way to skin a
15 cat.

16 (Pause in the proceedings.)

17 MR. PEEL: How is that?

18 THE COURT: That's better, yes.

19 MR. PEEL: There we go. All right. And we just had a
20 conference this morning about spending money on actual decent
21 equipment to do this with, so I think I have got another
22 argument. Okay.

23 Well, I was asking Mr. O'Hara to turn to Exhibit 6.

24 BY MR. PEEL:

25 Q Can you tell us what that is?

1 **A** This is a rental permit issued by the City of Columbia.

2 **Q** Okay. And what is it for?

3 **A** If you rent a property in Columbia, you have to submit an
4 application for a permit, and there's a number of criteria and
5 requirements that you have to confirm in order to receive a
6 permit. And we hold these permits for all of the -- for
7 properties that we have in Columbia that we rent.

8 **Q** Okay. And there are other permits behind that one. It's
9 actually three pages. And so you have them for both of those
10 units?

11 **A** That is correct.

12 **Q** And you have them currently? You have updated them this
13 year?

14 **A** Absolutely, yeah.

15 **Q** Okay. And does the City of Columbia require you to have
16 a business license?

17 **A** No, they require a special designation. I don't even
18 know what it is. But if you have five or more rental
19 properties, they require some sort of business license from a
20 rental property perspective, and we only have four, so I have
21 never seen it.

22 **Q** Did you tell the City these were short-term rentals?

23 **A** I did.

24 **Q** And what did they tell you?

25 **A** There was no difference.

1 Q Okay. When you bought the property --

2 MR. SAVILLE: Objection. Hearsay.

3 THE COURT: Do you want to be heard on that, Mr. Peel?

4 MR. PEEL: No, Your Honor. I'll waive it and move on.

5 THE COURT: Thank you. That's sustained.

6 MR. PEEL: Thank you.

7 BY MR. PEEL:

8 Q When you bought the property, did Middleborough have a
9 property manager?

10 A Yes.

11 Q Okay. Did you discuss --

12 A Did I have a property manager?

13 Q No, did Middleborough have a property manager?

14 A They do.

15 Q When you bought them, was it --

16 A Yes.

17 Q Okay. Did you have discussions with Middleborough's
18 property manager about how you were going to use these units
19 when you bought them?

20 A I did.

21 Q And what did you tell him?

22 A Well, it was a she.

23 Q Okay.

24 A And they were -- it was informal discussions, but, at the
25 time, I didn't realize there was an issue, but I was very

1 clear at what my intention was, both in terms of renovating
2 and what we were going do after we renovated.

3 Q And were you told by anyone at Middleborough when you
4 purchased these units that you could not rent them short-term?

5 A No.

6 Q And you have a written contract with each one of your
7 renters; is that right?

8 A They have to -- they have to --

9 MR. SAVILLE: Objection, hearsay.

10 THE COURT: Mr. Saville, are you objecting to what the
11 property manager told Mr. O'Hara? Is that what you're
12 objecting to, sir?

13 MR. SAVILLE: Yes, Your Honor, to the extent that there
14 were conversations with the property manager. To the extent
15 that there's any implication that the property manager or
16 someone from Middleborough told him that it was okay to rent
17 the properties as a short-term rental.

18 THE COURT: Mr. Peel?

19 MR. PEEL: That's not what I'm testifying.

20 (Indiscernible) admission against interest (indiscernible),
21 Your Honor. An agent of (indiscernible).

22 THE COURT: I'm going to allow it.

23 BY MR. PEEL:

24 Q I'm sorry. Do you have written contracts with all your
25 renters?

1 **A** Except electronically, our contract document.

2 **Q** Okay. Once you have a renter, how do they access the
3 property?

4 **A** We provide them with the keys physically.

5 **Q** How do you get up the elevators in Middleborough?

6 **A** You have to have a key fob.

7 **Q** And do you give the guest a key fob?

8 **A** Yes.

9 **Q** Okay. Have you ever received a written notice or any
10 formal notice from the board that any of your renters were
11 causing issues?

12 **A** No.

13 **Q** What type of renters do you generally have in these
14 units?

15 **A** It's a lot of different type of renters. You have people
16 that are coming to the city to work on projects. You have
17 people coming to the city to visit their children who are at
18 USC. You have people, families coming to witness graduations
19 from Fort Jackson. Weddings. Anniversaries. You name it. I
20 mean, it's really people traveling for either business or
21 vacation-related topics.

22 **Q** Tell me about the common elements in Middleborough. What
23 does it have available for use?

24 **A** There's a laundromat in the basement. There is a pool.
25 There's security. There's a common lobby. There are workout

1 facilities.

2 Q What was your understanding about your ability to use the
3 pool when you bought the property?

4 A I didn't really have an understanding except for that I
5 had full access and use to it.

6 Q Would you turn to Exhibit 8, please. Do you recall
7 receiving this letter?

8 A I did.

9 Q Okay. Who is it from?

10 A This was from the board president at the time in 2016.

11 Q And what was he telling you?

12 A He was telling me that I was renting my unit, 2-J, in
13 violation of the bylaws and master deed.

14 Q Did you continue to rent the unit?

15 A I did.

16 Q Does Middleborough -- the building, Middleborough condos,
17 have a front desk or office that is there for customer
18 service?

19 A Not that I'm aware of.

20 Q Is that no?

21 A Yeah.

22 Q Okay. Does Middleborough provide a centralized telephone
23 system for all the units?

24 A No.

25 Q Your leases are for fewer than 90 days -- 90 days or

1 fewer in both units; is that right?

2 **A** Yeah. The minimum is we do accept -- we have had rentals
3 longer than that.

4 **Q** Okay. Do you provide -- do you or Middleborough provide
5 housekeeping services at all?

6 **A** No.

7 **Q** What do your tenants generally do in the units?

8 **A** Sleep. I mean, depending on the term. I mean, if you're
9 coming for a weekend or even a few days and you're coming to a
10 special event, most activities tend to be centered around
11 those events and there's not a whole lot of activity occurring
12 in the units.

13 **Q** Okay. I'm going to refer you back to the master deed,
14 please, Exhibit 3, and ask you to turn to page 3, which will
15 be Article 2-B.

16 **A** Mm-hmm.

17 **Q** And do you see -- would you agree that defines what a
18 co-owner is in Middleborough?

19 **A** Yes.

20 **Q** And it says, "Used herein, the term 'co-owner' means an
21 individual, firm, corporation, partnership, association,
22 trust, or other legal entity, or any combination thereof,
23 which owns an apartment."

24 My question to you, then: Are you aware of any
25 corporations that own units in Middleborough?

1 **A** Yes, I am.

2 **Q** Is there more than one?

3 **A** Yes.

4 **Q** Are you aware of other units, during the time that you
5 have owned, being available for leases for less than a year?

6 **A** Yes.

7 **Q** Okay. Turn to Exhibit 18, please.

8 **A** I don't have Exhibit 18.

9 **Q** Oh, I'm sorry. Well, it's not tabbed that way. Okay.

10 **A** Yes, mm-hmm.

11 **Q** Okay. Were you aware that Bob Kates was renting
12 short-term furnished apartments during the time that you owned
13 units in Middleborough?

14 **A** Yes, I was.

15 MR. SAVILLE: Objection, Your Honor. Leading question.

16 THE COURT: I'm going to give him a little leeway here.

17 Thank you.

18 Go ahead, Mr. Peel.

19 BY MR. PEEL:

20 **Q** Did you review Bob Kates' ads?

21 **A** I did.

22 **Q** And what type of rentals were they allowing or offering?

23 **A** They were offering three-month rentals for furnished
24 apartments. They'd call them corporate apartments. I'm
25 familiar with that term as well. It's not much different than

1 vacation rental. Tend to focus it on a different market.

2 But he had six properties, actually. Six units. At the
3 time, this was 2016. I don't know how many he has now.

4 Q Were you aware of Bob Kates ever receiving a cease and
5 desist order -- a letter from the board?

6 A I have no knowledge of any of Bob Kates' business
7 dealings.

8 Q Turn in the master deed to page 4, please. Turn to
9 page 4.

10 A Which one?

11 Q In the master deed. Exhibit 3, page 4, article 4. Use
12 of the property. Do you see that?

13 A Yes, mm-hmm.

14 Q Section A says, "Use of property. Each co-owner shall be
15 entitled to his exclusive ownership and possession of the
16 apartment and may use the common areas in accordance with the
17 purpose for which they were intended and without hindrance or
18 encroaching upon the lawful rights of other co-owners."

19 Did you review that when you purchased the unit?

20 A Yes. I reviewed the whole document.

21 Q Do you believe you had right to use the pool without
22 hindrance?

23 A I did.

24 Q And how about the laundry room?

25 A I did.

1 Q How about entering and exiting the property?

2 A I did.

3 Q Do you believe your tenants would have those rights?

4 A I did.

5 Q Okay. I'd ask you to turn back to the bylaws.

6 A This is 4?

7 Q This is Exhibit 5, please.

8 A Five. Okay.

9 Q And, in particular, I want you to turn to -- the
10 Bates-stamp number at the bottom of that page is 242. It's
11 Article 10. And I should have worn my readers, but --

12 A 242. Article 10.

13 Q Article 10. It's entitled, "Notice and consent of
14 certain mortgages required." Are you with me on that?

15 A Mm-hmm.

16 Q Okay. And then Section B, "Consent of mortgagees." Do
17 you see that, Section B?

18 A Yes.

19 Q Okay. It says, "Except as provided in Article 5 of the
20 master deed, but in addition to any other similar provision
21 contained herein, the consent of the owners of apartment units
22 in which at least 67 percent of the votes in the council of
23 co-owners are allocated and the approval of the holders of
24 mortgagees on apartment units, which have at least 51 percent
25 of all votes of apartment units subject to mortgages, shall be

1 required to add or amend any material provisions of these
2 bylaws, the master deed, or other Regime documents of the
3 property which establish, provide for, govern, or regulate any
4 of the following."

5 And then I want you to turn the page to No. 5 on the next
6 page, which says, "Rights to use of the common areas."

7 So my question to you is, during the time that you have
8 owned these units, are you aware of any votes by the co-owners
9 allowing a change in the rights of the use of the common
10 areas?

11 **A** No.

12 **Q** Do you recall ever voting in such an election?

13 **A** No.

14 **Q** Do you ever remember receiving a vote -- a notice of a
15 meeting where that was going to be discussed?

16 **A** Not voted, no.

17 **Q** Okay. Do you recall ever receiving notice of a meeting
18 to vote to change the terms -- the terms that the units can be
19 rented for?

20 **A** No.

21 **Q** Are you aware of any -- are you aware of how many votes
22 it takes -- the percentage of votes it takes to change the
23 master deed?

24 **A** Yes.

25 **Q** What is that?

1 **A** 100 percent.

2 **Q** Okay. Are you aware of any attempt by the board to
3 present a vote to change the rental terms available to owners
4 through the master deed?

5 **A** No.

6 **Q** Are you aware of any attempt to make changes to bylaws to
7 change the way in which co-owners are entitled to rent their
8 units?

9 **A** No.

10 **Q** You have gotten no notice of meetings from the board that
11 you can recall?

12 **A** No.

13 **Q** So I want you now to turn to Exhibit 10. And do you
14 recognize this?

15 **A** I do.

16 **Q** And what is this, please?

17 **A** These are the rules that were implemented in January
18 2019, which actually was the basis of this action.

19 **Q** So I'm going to go through -- so you have some
20 objections, I take it, to the things that are in this rule
21 book.

22 **A** I had several.

23 **Q** So I'm going to walk you through a couple and ask you
24 some questions about that. If you would turn to the third
25 page. It's the page after the table of contents.

1 **A** Okay.

2 **Q** And it says, down here, the last paragraph, "A co-owner
3 is a person who owns the condominium unit and pays Regime
4 fees, assessment, and property taxes."

5 My question to you: Are you aware of any vote taken that
6 would have changed the definition of co-owner as set forth in
7 the controlling documents?

8 **A** No.

9 **Q** In the master deed or the bylaws?

10 **A** No.

11 **Q** Are you aware of any power the board has to change the
12 definitions in the master deed or bylaws without a vote of the
13 co-owners?

14 **A** I don't believe they do.

15 **Q** Okay. And then they added these other definitions: "A
16 resident is a person who resides in the condominium." That's
17 a question for you. Do you recall the term "resident,"
18 "residency," or "residential use" ever being defined in any of
19 the -- in the master deed or the bylaws?

20 **A** No.

21 **Q** But this defines "residency" is established by receiving
22 mail at Middleborough under the unit number occupied and
23 paying utility costs and other related expenses to the unit.
24 And then they define "guest" as a person whose mailing address
25 is not that in the Middleborough unit.

1 But these terms, that you read them before, were you
2 aware of these restrictions when you bought the unit?

3 A They were not restrictions when I bought the unit.

4 Q Are they anywhere in the master deed or bylaws?

5 A No.

6 Q Okay. Let's talk about the front desk -- the security
7 guard for a minute. Is there a security guard at
8 Middleborough?

9 A There is. I don't think they call them security guards.
10 I think they call them -- I don't know what they call them,
11 but, yeah, I think they made a distinction a couple of years
12 ago that they didn't necessary want them termed as security,
13 but that's really what they're referred to.

14 Q Well, if you turn to page 3 -- I'm going off the numbers
15 in the bottom left corner of Exhibit 10.

16 A Okay.

17 Q It says, "Security officers." Are you familiar with
18 security officers or what you would --

19 A Yeah.

20 Q -- recognize as a security officer?

21 A Yep.

22 Q Okay. In the past, did you leave your keys with the
23 security officer for your tenants to pick up?

24 A We did.

25 Q Do other co-owners, are you aware of them leaving items

1 with the security officers?

2 **A** I am.

3 **Q** What examples have you observed yourself?

4 **A** Well, I can use a very specific example that I actually
5 tested myself when I -- after these rules had been put in
6 place. Well after. Because our daughter lived in Unit 14-G
7 for about a year in 2018 to -- or 2019 to early 2020, and
8 because of this change, which I felt was directed very
9 specifically at our practice of leaving keys with the security
10 guard, I took a sweater that I told the security officer that
11 my daughter had left in my car and asked them if they would
12 hold it and she would come pick it up, which they did.

13 So, in general, I was aware that other co-owners were
14 allowed to leave things like a bouquet of flowers or, you
15 know, something that someone had left and they were coming to
16 pick it up. So it was not out of the ordinary for individuals
17 to leave things at the security desk either before these rules
18 were placed and implemented and after.

19 So my fundamental complaint was, Hey, I have absolutely
20 no problem if you set a rule and you hold everyone accountable
21 to that rule, but to single certain co-owners out and prevent
22 their use of those common services in a way differently than
23 everyone else is allowed, that doesn't seem acceptable to me.

24 **Q** So you're saying you're not allowed to leave your keys
25 with the security desk any longer?

1 **A** We are not. And we don't. We don't even attempt to.

2 **Q** Would you turn over to page 7 of Exhibit 10, please.

3 **A** Yes.

4 **Q** Okay. And I'm talking about the -- at the bottom of the
5 page, Section 8 says "Common area, swimming pool."

6 **A** Yes.

7 **Q** Okay. Has the board, with these rules, attempted to
8 limit your renters from being able to use the pool as the
9 common area?

10 **A** I don't recall the change, but I believe it had something
11 to do with the co-owner having to be present.

12 **Q** Does it say -- I think it's the second sentence; I'll
13 read this to you, "Guest must be accompanied by resident at
14 all times."

15 **A** Okay. Well, again, I don't -- I'm not aware of a
16 definition, unless the one arbitrarily provided by the board
17 of what a resident and a guest is, I consider any renter of my
18 unit to have the same rights as a tenant under the regime of
19 bylaws and master deed as any other rental -- renter would
20 have from other co-owners.

21 **Q** Well, back on page 1 of Exhibit 10, it says, "Guest is a
22 person whose mailing address is not that of any Middleborough
23 unit and who is temporarily housed on any length of time in an
24 owner's or residential unit." Would you say, then, that is
25 directed at your short-term rentals?

1 **A** My interpretation of some of these terms were that they
2 were very specifically targeted toward our practice of
3 short-term rental, yes.

4 **Q** And did you consider the pool an important part of
5 renting these units when you purchased them?

6 **A** It is absolutely an important part when it's 100 degrees
7 in the summer, yes.

8 **Q** Okay. Would you turn to page 9 of Exhibit 10, please.

9 **A** Okay.

10 **Q** And down at the bottom -- I'm sorry, at the top,
11 "Coin-operated washer and dryers are available for residents'
12 use."

13 **A** That one, I missed.

14 **Q** Did you expect your renters to be able to use the
15 laundromat inside Middleborough --

16 **A** Absolutely.

17 **Q** -- as part of the common areas?

18 **A** Yes.

19 **Q** As far as you know, are folks that are in there renting
20 in long-term leases allowed to use the laundromat?

21 **A** I would assume. I don't know for a fact.

22 **Q** Are you aware of anything in the master deed or bylaws
23 that would allow the board to make this restriction?

24 **A** No. That's why we're -- that's why this action was
25 taken.

1 Q Okay. Let's turn to page 14 of the Exhibit 10, please.
2 Okay. Keeping in mind that we believe that -- of the page 1
3 that "guest" is really -- your short-term renters comes under
4 this definition the board has made up. In using this
5 "guest" -- allow guest -- it says, "Section B, the security
6 officer on duty that has not been notified by a resident to
7 allow a guest to proceed to their unit, a security officer
8 must call and speak with the resident when a guest arrives."

9 My question to you is, are you aware of any other tenants
10 being treated this way -- any long-term tenants having to have
11 a unit owner call?

12 A I have never actually been called by a security officer,
13 and I really don't know how this is enforced.

14 Q Are you aware of that ever being enforced with anyone in
15 Middleborough?

16 A I'm not aware of it, no. It was never enforced with us.

17 Q Okay. But you can't get in the elevators without a key
18 fob; right?

19 A That is correct.

20 Q And so there's no entry to the rental units without --
21 the apartments without a key fob?

22 A That is correct.

23 Q Okay. Would you turn to the next page, please. Page 15.

24 A Yes.

25 Q Of Exhibit 10. And this is No. C. This is the one we

1 were talking earlier about your keys being transferred, the
2 security officer is not a hotel concierge and is prohibited
3 from assisting renters by acting as an intermediary. Are you
4 aware of them accepting -- have you seen them accept packages
5 for people?

6 **A** I am very aware of specific instances where they had
7 accepted things for co-owners, including myself, before and
8 after these rules were implemented.

9 **Q** Okay. And I'm going to point your attention now to
10 letter G on the same page.

11 **A** Mm-hmm.

12 **Q** "Accommodation rentals are prohibited and residential
13 units may only be used for residential purposes." Do you know
14 what "accommodation rental" means?

15 **A** No.

16 **Q** Are you aware, again, of any type of restriction on the
17 term of rental in Middleborough from the time you purchased
18 the unit --

19 **A** No.

20 **Q** -- to the master deed or bylaws?

21 **A** No.

22 **Q** Are your renters using your units for residential
23 purposes?

24 **A** It is a residence. They're staying in a residence when
25 they're staying in our property.

1 Q Okay. I'm going to now ask you to turn to page 17 of the
2 Exhibit 10. There is a section entitled -- it's 21 --
3 "Short-term rentals."

4 A Mm-hmm.

5 Q Okay. It says, "A. Pursuant to authority granted by
6 Article 2 of the association bylaws, the board of directors
7 had concluded that offering of rental of any residential unit
8 for a term of less than 30 days shall be deemed a
9 nonresidential use of the property and prohibited."

10 Have you seen this restriction when you read the rules?

11 A Yes.

12 Q Did you go back and look at Article 2 of the bylaws?

13 A No.

14 Q Let's do that now, which is Exhibit 5, which would be the
15 third page. Article 2-B, it sets forth by authorities and
16 duties of the board.

17 A Mm-hmm.

18 Q And it lists out eight items. Do you see -- are you
19 aware of anything in there that says they can change the --
20 your ability to rent the unit on terms that you wish?

21 A No. I believe this relates to their ability to implement
22 certain rules and regulations from time to time.

23 Q Do you believe this interferes with your desired use of
24 your property?

25 A I absolutely do. That's exactly -- I mean, this is the

1 term that resulted in this action, and it had been discussed
2 for a number of years. So when it was actually formalized and
3 put into writing, I had no choice but to make an attempt to
4 protect my rights as a co-owner.

5 **Q** You reviewed some of the property records of entities and
6 people that owned units in Middleborough; is that correct?

7 **A** When I was involved with the kind of unofficial group of
8 co-owners -- I can't remember exactly what they were called --
9 we were going to mail letters on the board proceedings for
10 2016 or '17, and, at that point, I was involved with producing
11 a full registry through tax records of the -- all the
12 co-owners at the time. And, yes, there were a number of -- I
13 became familiar with the co-owners, yes.

14 **Q** Okay. And I think I asked you, so you were aware that
15 there were a number of corporations that owned units in the
16 building?

17 **A** Yes.

18 **Q** And, finally, what is it that you want to be able to do,
19 Mr. O'Hara?

20 **A** I want to be able to execute my rights as a co-owner as
21 they are written in the master deed and the bylaws in the
22 State of South Carolina. That's been my only objective from
23 the beginning.

24 And my other objective is to be a reasonable and
25 productive member of the Middleborough community, which we

1 believe we have been since we purchased these units. At one
2 point, we owned four units in the building and were spending
3 quite a bit of time there. So, you know, we're interested in
4 property values, we're interested in the community, but we're
5 also interested in our rights as co-owners.

6 MR. PEEL: Thank you, Your Honor. That's all the
7 questions I have for Mr. O'Hara.

8 THE COURT: Okay. Either Mr. Saville or Mr. Shealy, if
9 you want to ask Mr. O'Hara some questions on
10 cross-examination.

11 MR. SAVILLE: Yes, Your Honor. Thank you. I'm just
12 going to reposition my computer to make sure everything is
13 working okay.

14 CROSS-EXAMINATION

15 BY MR. SAVILLE:

16 Q Good afternoon, Mr. O'Hara. How are you doing? Am I
17 coming through okay on the O'Hara side?

18 MR. PEEL: I'm sorry. I'm sorry. I pressed mute.

19 MR. SAVILLE: Oh, okay. No, no problem. No problem.

20 BY MR. SAVILLE:

21 Q Good afternoon, Mr. O'Hara. How are you doing?

22 A Everything is perfect. Thanks.

23 Q Okay. Forgive me if I seem to repeat a few of the early
24 questions that Mr. Peel may have asked you. The sound was a
25 little bit fuzzy. I just kind of want to make sure I

1 understood some things correctly.

2 What do you do for a living, Mr. O'Hara?

3 **A** I'm the CEO of Collect (ph) Technologies, which is a
4 renewable surgery company. We have lost video on this -- oh,
5 there we go. We got it back. Okay. So, yes, I'm a CEO of a
6 renewable energy company.

7 **Q** Okay. Excellent. And, Mr. O'Hara, I understand that you
8 have the exhibit list there with both of you. Could you
9 please turn to Exhibit 16.

10 **A** Yes.

11 **Q** And is that a copy of your LinkedIn page?

12 **A** Yes.

13 **Q** And I see on the, I guess, the biography there, you
14 identify yourself as the president of Krebone Enterprises,
15 LLC? I think it's on the --

16 **A** Krebone, yes.

17 **Q** Okay. And it says you have a keen ability to recognize
18 market opportunities and translate them into business
19 (indiscernible)?

20 **A** That is true, yes.

21 **Q** Okay. And when did you first buy Units 2-J and 14-G at
22 Middleborough?

23 **A** We purchased 2-J in the spring of 2015 (ph), and we
24 purchased 14-G in August of 2017.

25 **Q** Okay. And both of those units are in Phase 1 at

1 Middleborough; is that correct?

2 **A** I -- yeah. I don't know if they're Phase 1 or Phase 2,
3 but they're in the same phase as all the other units, yes.

4 **Q** Okay. And you testified earlier, just making sure, that
5 you bought them with the intention of using them as short-term
6 rentals?

7 **A** Yes. 14-G, not so much because we had already run into a
8 bit of -- you know, there were residents who weren't pleased
9 with what we were doing in 2-J, so we chose with 14-G to do it
10 30-days-plus, and that's basically what we committed to. We
11 have not rented 14-G less than 30 days so far.

12 **Q** Okay. You mentioned some residents were not pleased with
13 what -- how y'all were handling Unit 2-J. Where did those
14 complaints arise from?

15 **A** They were general hearsay. You know, there are a lot of
16 residents there, and we had positive response from a lot of
17 folks about what we were doing. In fact, people would enter
18 the building that rented our unit to their families when
19 they'd come to visit (indiscernible), and then we have some
20 certainly that weren't happy. This is kind of the normal
21 compilation of (indiscernible).

22 **Q** Okay. What were they unhappy about?

23 **A** They didn't like the nature of people coming in and out
24 that they didn't know. And I can assure you that's from my
25 own time in the building. It's very difficult to tell who you

1 know and who you don't know at any given day.

2 Q Okay. And do you or Mrs. O'Hara live in Middleborough?

3 A We do not.

4 Q Okay. And so y'all live elsewhere in Columbia; correct?

5 A Yeah. We live less than a mile from Middleborough.

6 Q Have you ever lived at Middleborough?

7 A We have. We lived in Middleborough while we were
8 renovating two units in 2016 and 2017.

9 Q Okay. So you just stayed there temporarily?

10 A Yes.

11 Q Okay. And so you said the last time that you lived there
12 was -- or that you stayed there was 2018?

13 A I think we stayed there once or twice when our house was
14 being renovated in 2019, but, yeah, for the most part, that's
15 the longest time we were -- yeah, since then, no.

16 Q Okay. And I know -- I believe this question was asked of
17 you by Mr. Peel. Mr. O'Hara, I'm sorry, but I'm not sure I
18 caught it. Do you have any other investment properties
19 besides the ones at Middleborough?

20 A Yes. We have three other investment properties.

21 Q Okay. Do you rent any out of those out on a short-term
22 basis?

23 A One of them, yes.

24 Q Okay. Now, we want to ask a few questions about Krebone
25 Enterprises. We covered earlier that you're the president of

1 Krebone Enterprises, LLC. Are there any other members of
2 Krebone?

3 **A** My wife.

4 **Q** Okay. And why was Krebone established?

5 **A** When we first -- when I first retired in 2016, we were
6 going to invest much more heavily in real estate properties.
7 And the original intent of Krebone, which is kind of a name we
8 have had for a long time, was to kind of have -- be an
9 umbrella over there. But we just didn't go that route. It
10 didn't make sense, and we really haven't used it very much
11 since.

12 **Q** Okay. Thank you. I'm glad I got to hear you say it out
13 loud; I have been saying it wrong all this time.

14 So, as I understand, I think you testified that there's
15 never been a reservation made for either of the units through
16 the Krebone website; correct?

17 **A** That is correct.

18 **Q** But if I were to go to the Krebone website, I could check
19 the rates and availability; correct?

20 **A** For 2016, yes. I, frankly, haven't touched it in five
21 years. If I knew how to shut it down, I would but I don't.

22 **Q** I gotcha. I gotcha. We'll move on from the Krebone
23 website and over to the Airbnb and VRBO realm. Do you use any
24 websites other than Airbnb and VRBO to advertise the
25 properties?

1 **A** Not at -- not at present. Initially, I think as I
2 mentioned early on, we used Trip Advisor. But in the end, we
3 were not pleased with the quality of their platform, so we
4 dropped it.

5 **Q** Didn't you, at some point, advertise it on Expedia as
6 well, I believe?

7 **A** No. I mean, Expedia -- a number of these different sites
8 are owned by the same companies, and Expedia may have been
9 linked to the VRBO or Trip Advisor but we never actually
10 posted on Expedia, no.

11 **Q** Okay. Mr. O'Hara, I'm going to direct you to Exhibit No.
12 13. And you can just let me know when you're there, and I'm
13 getting there too. Let's see here.

14 **A** Yep.

15 **Q** Apologies for the delay. I had something close on my
16 computer but I'm getting back on the page now. Okay. If you
17 will turn to -- I know there's no page numbers on these
18 exhibits, but if you could flip to the third page of Exhibit
19 13 for me, Mr. O'Hara, where it says, "Comfy
20 two-bedroom/two-bathroom Columbia condo."

21 **A** Yep.

22 **Q** Okay. Is this the Airbnb listing for Unit 2-J?

23 **A** It appears to be, yes.

24 **Q** Okay. And it says that you are a super host. What does
25 that mean?

1 **A** There are certain criteria that Airbnb and VRBO actually
2 establish for their renter -- for their owners. It includes
3 (indiscernible), it includes ratings that the renters actually
4 provide back to the owners. It includes -- I can't remember
5 all the criteria, but, basically, it's the top category of
6 host, as they call it, on Airbnb. And we have been super host
7 since we could be.

8 **Q** Okay. Is it tied in to how many times you have rented
9 the property?

10 **A** No. I don't believe that's the criteria. It's really
11 about service and responsiveness.

12 **Q** Okay.

13 **A** And the quality of the (indiscernible).

14 **Q** Gotcha. And the page says, "Self-check in. You can
15 check in with the doorman." Who is the doorman referring to?

16 **A** That is something that I have missed. I'm not aware of
17 that. It's definitely in direct conflict with our rules that
18 we publish, which, I think, are also in these exhibits. But
19 the rules clearly state that they contact us for the keys, and
20 we meet them and deliver the keys to them. Previously, it was
21 they can get keys from the security officer. But, yes, that
22 doorman is a nomenclature. I have missed the (indiscernible).

23 **Q** Okay. Okay. And the description says, "It's perfect for
24 Gamecock football weekends, short corporate visits, or weekend
25 getaways." Would you say that's a pretty typical use of the

1 people who are making the reservations here?

2 **A** It's an -- those are examples of what they are typically
3 used for, yes.

4 **Q** Okay. And does the Airbnb website list some reviews from
5 people who have made reservations with you?

6 **A** Yes.

7 **Q** And I see you have a few there. It says, "Convenient
8 location for football games and concerts." Would you say you
9 get those comments a good bit, that it was the convenient
10 location to, you know, events, which is what influenced their
11 stay?

12 **A** No, that's not necessarily what we normally see. We
13 normally see that it's in a convenient location for the city.
14 I mean, I would -- we have hundreds of these ratings and
15 reviews, and I would say that was not necessarily a
16 (indiscernible).

17 **Q** Okay. And it also says, if you scroll down to past the
18 reviews where it says, "Hosted by Kevin," this is the sixth
19 page of the exhibit. Sorry, again, there's no page numbers on
20 there. You see where it says "Hosted by Kevin"?

21 **A** I do.

22 **Q** And I know it says, "People who clean this host's listing
23 are paid a living wage." Who would that be referring to?

24 **A** I don't even know what that is because the -- my wife and
25 I clean it, and we get paid in our rentals.

1 Q Okay.

2 A We don't hire anyone to clean these properties. We did
3 our daughter, but she's got more than a living wage.

4 Q Gotcha. And the -- it listed the check-in as after 4
5 p.m. and check-out at 11 a.m.; correct?

6 A That is correct. And let me just say one thing, too,
7 because Airbnb -- I'm guessing that you can get this from a
8 lot of people who rent their properties on Airbnb. Airbnb
9 takes some liberties in terms of kind of wording and things
10 that they use, and they will even change the wording that the
11 owners put in describing their property to meet whatever
12 criteria they're trying to meet.

13 So I don't -- there's a couple of things in here that you
14 pointed out that, frankly, I was not even aware of.

15 Q Okay. What changes do you think Airbnb made to the
16 website?

17 A Well, I know for a fact -- I don't know -- I can't say
18 exactly what changes they have made, but they have changed
19 specific wording in descriptions that I have provided for the
20 property. I use -- I like to use the term "renter" and
21 "owner," and they frequently change it from "host" to "guest."
22 And that's just my preference in terms of the terminology that
23 I would like to describe the property. They change that
24 frequently, and I tend to go back and forth with them on it.
25 (Indiscernible).

1 Q And, Mr. O'Hara, you trailed off towards the end there.
2 Could you say something into the microphone just to make sure
3 I got still you.

4 A Yeah. Can you still hear me?

5 Q Yes, sir. Thank you very much.

6 And last question I'll ask you about the Airbnb page that
7 we have here: Does it also says under "Things to keep in
8 mind," "Self-check-in with the building staff"?

9 A Where does it say that?

10 Q Under "Things to keep in mind." It's on the -- it's the
11 page after "Hosted by Kevin."

12 A Yeah, it would -- it very well could be because that's
13 the way that we did it for quite some time and I just haven't
14 changed it. But, again, our current rules and our current
15 contract are clear on what the rules are for getting in and
16 out of the building.

17 Q Okay. And we will move on from the Airbnb website, but
18 we're going to stay on Exhibit 13. And if you flip a couple
19 of --

20 MR. PEEL: Question: I'd like to point out, just for
21 reference in the bottom right corner, they're all
22 Bates-stamped Kevin O'Hara and they have a number of them, if
23 you want to refer to the number in the bottom right corner.

24 MR. SAVILLE: For some reason, I think -- thank you,
25 Wesley, but for some reason, it has blurred out on the bottom

1 right corner when I access them.

2 MR. PEEL: Okay. I'm sorry.

3 MR. SAVILLE: Yeah, yeah. Well, thank you. That would
4 have been helpful comments. Probably something technological
5 on my end.

6 BY MR. SAVILLE:

7 Q So this is the -- I'm looking at what appears to be a
8 VRBO website. You let me know if you're there, Mr. O'Hara.

9 A Yeah, okay.

10 Q Okay. And does this appear to be a printout of Unit 2-J
11 on VRBO?

12 A I'm having a hard time understanding -- yeah, yes, it
13 appears to. It's the one that has VRBO at the top?

14 Q Yes, sir.

15 A Yeah. Yep.

16 Q And does it say -- so it says \$120 per night. Is that
17 about the going rate?

18 A It changes. There's a discount for week. There's a
19 discount for month, yes, but that is -- if you rent it for --
20 the minimum is two days, but if you rented it for a weekend,
21 the rate is 120 per night.

22 Q Okay. And I notice that under where it says -- and it's
23 still on the same page, but on the bottom left, there's a
24 little box that says, "Instant confirmation." What does that
25 refer to?

1 **A** VRBO does pre-screening, and based on certain criteria,
2 it tells (indiscernible) their screening criteria in
3 acceptance with our rules allows for a (indiscernible) to book
4 directly from this page.

5 **Q** Okay. So it allows them to reserve the unit without you
6 actually looking at them and approving them.

7 **A** That is correct. But it has to be for a certain criteria
8 which we define.

9 **Q** And do you advertise access to the Middleborough
10 amenities such as the pool, fitness center, and security on
11 the web page?

12 **A** Not security, but the pool and the workout facilities,
13 yes.

14 **Q** Okay.

15 **A** Our rules are very clear about the security. We ask them
16 not to approach security for any reason other than a building
17 emergency.

18 **Q** And I notice on -- sorry that I don't have a Bates label
19 for you. It's on the VRBO page but a couple of pages down.
20 You can see in the bottom right it says four out of ten, if
21 that helps you find the page. Under "Outside Services," it
22 says, "Housekeeper optional." So are the folks who make
23 reservations able to request that there be a housekeeper for
24 the unit?

25 **A** No. No, they're not.

1 Q Okay.

2 A That's another housekeeping topic. I don't even know
3 where that came from. It's typically not -- I mean, unlike
4 any other or basically the same as any other vacation-type
5 rental, you don't really have housekeeping services. And we
6 have never offered them.

7 Q Okay. And does somebody go in and clean the units or the
8 unit between renters or between the people who make
9 reservations? Are they cleaned out? Is anything refreshed?

10 A Absolutely, yes. We do that ourselves, and that is also
11 a significant piece of the rating regarding super host, the
12 cleanliness of the property.

13 Q Okay. And that's between every reservation?

14 A Yes.

15 Q And are these reviews from people who have presumably
16 stayed in the unit, talking about a football weekend and a
17 boot camp graduation?

18 A Yes.

19 Q I'm going to ask a few, I guess, technical questions,
20 Mr. O'Hara, about the procedure for actually facilitating the
21 reservation of a place on Airbnb. How are you alerted that
22 someone wants to reserve a unit?

23 A I would send them an inquiry from either platform in the
24 form of an email. And it basically has the person's name,
25 where they're from. It has whatever screening criteria have

1 been used for that particular traveler. It has the dates that
2 they're interested in. And then we basically -- unless they
3 already have -- whatever term we used a few minutes ago, the
4 ability to instant book, we see all that and make a decision
5 as to whether or not we accept the rental or not.

6 **Q** Okay. And how does the payment work? How does the
7 payment get from the person making the reservation to the
8 O'Haras?

9 **A** The traveler actually pays via credit card to Airbnb or
10 VRBO. And they actually do things differently. VRBO allows
11 you to get half the payment at the point of reservation and
12 the other half when -- a couple of weeks before the guests
13 arrive. Airbnb actually pays out the day after the guest or
14 traveler checks in. And both of those are paid directly to
15 our bank account or through PayPal and then we transfer to our
16 bank account.

17 **Q** Okay. Okay. And does Airbnb and VRBO, do they handle
18 any sort of -- I think we mentioned some special taxes in your
19 deposition. Do they take a cut of what is paid by the person
20 making the reservation to go towards the special taxes?

21 **A** There's not a cut. It's actually added on top. So that
22 one point per night rate has taxes actually added for local
23 and state taxes added on top, and they actually handle
24 collection and payment of those taxes.

25 **Q** Okay. Because there's, like, an accommodations tax;

1 correct?

2 **A** I don't -- we pay whatever taxes we're required to pay.
3 I'm not exactly sure what they are. The good thing about
4 these platforms is they actually take the legal responsibility
5 for you to collect and pay the taxes that are required.

6 **Q** Okay.

7 **A** And they give me an annual summary of what's been paid.

8 **Q** Thank you for explaining that.

9 And so I think, as you have testified in your deposition,
10 would you say that your customers are usually staying at the
11 property to attend an event?

12 **A** Could be a family event, yes. I think there seems to be
13 a skew towards concerts and football games, but that's not the
14 norm.

15 **Q** And I understand you testified in your deposition that
16 people are typically not even eating at the property; is that
17 correct?

18 **A** Sometimes not. I mean, one of the things we found about
19 short-term is the wear and tear on the property tends to be
20 quite a bit lower. Sometimes, you know, people will come in
21 for a weekend, and after -- when we come in after they
22 finished, it looks like they hadn't even been there.

23 **Q** Gotcha. Gotcha. And I'm going to get into some
24 numerical stuff here, Mr. O'Hara. If you can please let me
25 know when you are at Exhibit 18, and I will likewise let you

1 know when I'm there.

2 **A** Okay. I have got an old book that didn't have Exhibit
3 18, so yes, I'm there now.

4 **Q** Okay. Great. And I can share the screen with you if you
5 don't have it there, so just let me know.

6 **A** I got it, yep.

7 **Q** Okay. I am going to scroll down -- and this one actually
8 is Bates labeled, so I'll be more easily -- on my end, so I'll
9 be able to more easily direct you to it. If you could please
10 turn to Kevin O'Hara 60.

11 **A** 60?

12 **Q** Yes, sir. It is the 2017 profit and loss.

13 **A** Are you sure it's Exhibit 18?

14 **Q** I have it as the third page of the PDF, if that helps.

15 MR. PEEL: Hold on just a second; I'll get him a copy up
16 on my computer. Okay?

17 MR. SAVILLE: Oh, take your time. And I can also share
18 my screen if that becomes more convenient for y'all.

19 MR. SHEALY: Well, let's see who gets it first. Go
20 ahead.

21 MR. PEEL: I'm there. I got it. I need to make a
22 correction to the record because my books were messed up.
23 When I referenced Exhibit 18 in my case, it was actually 13 in
24 the file. My notes were incorrect. So 18 is the profit and
25 loss statement. I do have that now.

1 BY MR. SAVILLE:

2 Q And I am --

3 MR. SAVILLE: Sorry, Your Honor.

4 BY MR. SAVILLE:

5 Q And I am on the 2017 profit and loss, which is Bates
6 labeled Kevin O'Hara 60. Are you with me?

7 A Yep. I have got (indiscernible). 60, yes.

8 Q Okay. Great. And is this -- what are we looking at
9 here, Mr. O'Hara?

10 A What you're looking at is a typical profit and loss
11 statement for an investment. And this is the basis of our tax
12 filing. All this information is generated out of QuickBooks,
13 and it has receipts and everything else behind it that we use
14 to get to our accountants to prepare our tax return.

15 Q Okay. And am I interpreting the chart correctly to read
16 that the total income from Unit 2-J in 2017 was \$25,692.47?

17 A Yes, that is correct.

18 Q Okay. And I'm going to go down to the two-thousand
19 and -- the next page, it's the 2018 2-J profit and loss. And
20 am I reading that correctly to indicate that, in 2018, there's
21 a total income of \$17,612?

22 A That is correct.

23 Q Okay. And scrolling down -- I don't think the 2019 was
24 actually included in the trial book, but that's okay. We will
25 move on from there.

1 **A** This was -- oh, that's -- that's just a misheading,
2 actually. It says 2018, but I didn't correct it. It says
3 January through December of 2019, which is 62.

4 **Q** Great. Thank you very much, Mr. O'Hara. Thank you for
5 spotting that for me. And it shows a total income in 2019 for
6 16,046 -- \$16,046.75; correct?

7 **A** That is correct.

8 **Q** All right. And we have established that folks can
9 reserve the unit for a minimum -- I'm sorry; I think I
10 heard --

11 **A** Go ahead.

12 **Q** I'm sorry; am I coming through okay?

13 **A** Yes.

14 **Q** Okay. I think we established that folks can rent the
15 Unit 2-J right now for a minimum of two nights. And is it
16 your intention to allow your other unit at Middleborough to
17 also be reserved in a similar fashion?

18 **A** It's not the current intention, but I don't want it to be
19 limited.

20 **Q** Okay. And what would you say the average stay from
21 someone who makes a reservation in Unit 2-J is -- average
22 length of stay?

23 **A** Precisely around 4.6 days. And that's about a five-year
24 average.

25 **Q** And the rate charged is a daily rate; is that correct?

1 **A** That is correct.

2 **Q** Now, this might seem like a silly question, but do you or
3 Mrs. O'Hara stay at the property while the person who made the
4 reservations is staying there?

5 **A** No.

6 **Q** Okay. Have any of the people who made reservations and
7 stayed there ever established utilities in their name at
8 Middleborough?

9 **A** No.

10 **Q** Has anyone who made reservations and stayed there ever
11 established a PO Box or a mailbox in their name at
12 Middleborough?

13 **A** Yes. Not established in their name but we have had given
14 them access to the box.

15 **Q** Okay. You have given them access to the box.

16 And who was that?

17 **A** I can't recall. It's been a number of guests who have
18 needed or expected to be receiving some mail.

19 **Q** Okay. And is it correct that someone who made
20 reservations in Unit 2-J has only stayed there at least 30
21 days one time?

22 **A** I don't know.

23 **Q** Mr. O'Hara, do you -- I'm sorry?

24 **A** Not many. I don't know how many. I know one
25 specifically but I can't recall, over five years, if that's

1 the only one.

2 Q Okay.

3 A And that individual has stayed twice, actually, two years
4 in a row.

5 Q Gotcha. Mr. O'Hara, do you know the people that are
6 making these reservations and staying in the unit?

7 A Seldom. We know some of the other co-owners in
8 Middleborough have rented our unit for family, so, in those
9 cases, we know them, yes. In most cases, we do not.

10 Q Okay. So, in most cases, neither you nor Mrs. O'Hara
11 have met these people until you meet them to hand them the
12 keys to Middleborough?

13 A That is correct.

14 Q Okay. Do you require any sort of COVID testing,
15 documentation or disclosure before they stay in the unit?

16 A We have -- there's been state requirements that have been
17 published, and there's been building requirements that have
18 been published. We have communicated and required all of
19 those requirements to be followed by all of our guests. And
20 we have communications to back that.

21 Q Okay. And how do you verify that they have complied with
22 those guidelines?

23 A Well, the main guideline -- I can't recall the guidelines
24 that the governor issued in May or June, so I can't recall
25 specifically what they were but I don't believe they were

1 restrictive on anything related to our renters. Since then,
2 the building has required that masks be worn in all common
3 areas, and we essentially -- you know, we meet the guests. We
4 wear the masks in the common areas. We request that they wear
5 the mask in the common areas, and I have not heard a single
6 complaint about any of our renters not wearing masks in the
7 common areas.

8 **Q** Okay. And are you familiar with the CDC guidelines
9 regarding unit turnover?

10 **A** Yes. And VRBO and Airbnb have very specific requirements
11 in terms of cleaning and unit turnover, but yes, we are aware
12 of that.

13 **Q** Okay. What do they require?

14 **A** The CDC?

15 **Q** Yes. The unit turnover guidelines.

16 **A** I don't have that. I don't. I'm not aware of the CDC,
17 no.

18 **Q** Okay. No further questions. Thank you very much.

19 MR. PEEL: No redirect.

20 THE COURT: No redirect?

21 MR. PEEL: No, Your Honor.

22 THE COURT: Okay.

23 MR. PEEL: That's all our witnesses.

24 THE COURT: I guess the plaintiff rests.

25 MR. PEEL: Plaintiff rests.

1 THE COURT: Okay. Then I'm going to mute you and unmute
2 Mr. Saville.

3 MR. SAVILLE: Thank you, Your Honor. We do have just one
4 witness, Mr. Baker, who is here with us. And we don't
5 anticipate him to take too terribly long.

6 THE COURT: Okay.

7 MR. SAVILLE: Thank you very much. I'm going to move the
8 computer around in a moment so you can see everybody.

9 THE COURT: Okay.

10 MR. SAVILLE: Your Honor, this will be my first remote
11 trial proceeding. Do we need to do any kind of -- is there
12 any kind of swearing in that Mr. Baker needs to do or anything
13 like that?

14 THE COURT: I'll swear him in.

15 MR. SAVILLE: Oh, okay. Gotcha. Gotcha.

16 THE COURT: Thank you. Raise your right hand.

17 KENNETH BAKER,
18 the witness, after having been duly sworn, was examined and
19 testified to as follows:

20 THE COURT: Give me your full name, sir.

21 THE WITNESS: My name is Kenneth Baker. I'm a resident
22 at Middleborough and on the board of directors.

23 THE COURT: Thank you, sir.

24 DIRECT EXAMINATION

25 BY MR. SAVILLE:

1 Q Thank you, Mr. Baker. You actually answered my --
2 essentially answered my first two questions. Do you live in
3 Middleborough?

4 A Yes.

5 Q Okay. How long have you lived in Middleborough?

6 A Probably for ten years. Most recently, I have owned
7 property since the 1980s, off and on.

8 Q And you said you're currently a board member. How long
9 have you served on the board?

10 A Since 2017.

11 Q Okay. Can you describe the Middleborough facilities for
12 me?

13 A Well, it's described in the master deed. You have the
14 documents. It's a high-rise community, 18-story building. I
15 think 192 residences which, in the master deed, are referred
16 to as residences. The property consists of the common area,
17 lobby area. They have a swimming pool. They have male and
18 female spas. We have a parking garage. And then common areas
19 around the building, the yards, and so forth.

20 Q So it's a self-contained building with all the --

21 A Yes.

22 Q -- living spaces?

23 Okay. And once you have access to the front door of
24 Middleborough, do you have access to the whole building?

25 A Yes. Well, you have access into the building to get on

1 to the elevators and get to the other floors. You have to
2 have a fob --

3 Q Okay.

4 A -- to get on the elevator.

5 Q Mr. Baker, I'm going to hand you a copy of Exhibit 3 that
6 we have listed. These are the -- this is the bylaws of
7 Middleborough Horizontal Property Regime which are
8 incorporated into the master deed and our Exhibit D to the
9 master deed.

10 You know, I probably put you on the wrong page there.
11 I'm sorry. Here you are. Now, do you see, on the first page
12 of the bylaws at Article 1-C refers to Phase 1 being 192
13 apartments?

14 A Can you point out where you are there?

15 Q Let's see. Article 1, Section C. You know what? I
16 apologize. We need to be looking at the master deed. It is
17 Article 1, Section C of the master deed, Mr. Baker.

18 A Yes.

19 Q Do you see where it says that -- it refers to Phase 1
20 being 192 apartments?

21 A Residential apartments.

22 Q Okay. Okay. And do you live in Phase 1?

23 A Yes.

24 Q Is that where everybody lives if they live in
25 Middleborough, is Phase 1?

1 **A** Yes.

2 **Q** Okay. What is Phase 2 for?

3 **A** Phase 2 was referred to in the original master deed and
4 indicated that it would be both residential and commercial
5 rentals.

6 **Q** Okay. Okay.

7 **A** That basically is the shops and so forth along the main
8 lobby, and then, on the ground floor, there used to be
9 commercial property. It's been out of use for several years
10 because of a lot of financial problems.

11 **Q** Okay. Okay. Gotcha. Thank you. And now I actually
12 will ask you to turn to the bylaws, which are Exhibit D of the
13 master deed there. And, again, I specifically direct you --

14 THE COURT: Mr. Saville, I had Mr. Peel muted. I'm
15 unmuting him now. I see he sent me a message. So he would
16 like to object, because I had him muted.

17 MR. SAVILLE: Oh, sorry.

18 THE COURT: Did you want to object to something,
19 Mr. Peel?

20 MR. PEEL: It really wasn't an objection so much as I
21 wanted to clarify the exhibit number because he said Exhibit 3
22 but then he referred to the bylaws. I think the bylaws are
23 Exhibit 5.

24 MR. SAVILLE: Right. Sorry about that, Wesley.

25 MR. PEEL: Okay.

1 THE COURT: And I think what you're referring to was the
2 master deed, which I can (indiscernible) C.

3 MR. SAVILLE: Yes, Your Honor.

4 And so now we actually are turning to the bylaws, which
5 are Exhibit D of the master deed. I think the bylaws are
6 Exhibit 5, according to the labels for this trial.

7 BY MR. SAVILLE:

8 Q Now, Mr. Baker, turning to Article 11, Section A of the
9 bylaws. Are you there with me?

10 A Yes.

11 Q Okay. What's the heading for that section?

12 A "Restrictions and Regulations."

13 Q Okay. And there's only three restrictions listed there;
14 right?

15 A I believe so.

16 Q All right. What is the very first restriction?

17 A "Apartments in Phase 1 shall be used only as residence."

18 Q Now, why do you care that the O'Haras are using their
19 units -- their unit in Phase 1 the way that they are?

20 A Well, I'm not submitted as an expert witness, but as a
21 lawyer, I know the term "residence" has certain definitions
22 that I don't think Airbnb qualifies for as a residence. My
23 belief, when it says a "residence," is that it's a place where
24 you actually live. One definition of residence is that it's a
25 place where you -- even though you may temporarily leave, you

1 intend to come back. And that is my belief, and I think that
2 Airbnb violates that.

3 **Q** And are there any practical concerns that you have
4 arising from -- other than the legal concerns?

5 **A** Well, one of the things just mentioned earlier, we have
6 no knowledge of who these people are who are coming in. They
7 are not tested. Right now with the virus situation being what
8 it is, I think it imposes an unusual hazard on our residents
9 to have people coming in who we don't know who they are, where
10 they have been, what they have been exposed to. And I think
11 that subjects us to an unreasonable risk.

12 We have attempted, in the building, as someone said
13 earlier, to protect people in the building. One of the strong
14 requirements we have is for masks, and we have the courtesy
15 officers on the desk instructed to enforce that. If anyone is
16 seen in the residence or the lobby area without a mask,
17 they're asked to get a mask, and if they don't have one, we
18 give them one.

19 **Q** Okay. Are there security concerns arising from the
20 O'Haras use of the building?

21 **A** Well, once a person gets a fob and can get on the
22 elevator, they can go anywhere in the building.

23 **Q** Gotcha. Now, Mr. Baker, earlier, we discussed that there
24 are 192 apartments in Phase 1 in Middleborough pursuant to the
25 master deed. Are you aware of any other co-owners right now

1 who are making their units available on a short-term basis
2 like the O'Haras?

3 **A** No. I say -- when I say "no," I'm saying I don't know if
4 there are.

5 **Q** Okay.

6 **A** I know a couple of times when people have attempted it,
7 and when it was called to their attention, they stopped.

8 **Q** Okay. So it has arisen before and y'all sent, like, a
9 demand letter to them or something?

10 **A** Yes.

11 **Q** Okay. So out of 192 apartments in Phase 1, you, as a
12 board member, are aware of only one apartment being used this
13 way?

14 **A** Yes. When I say only one, only the O'Hara apartments.
15 If they're using both of them. I don't know whether they're
16 renting both of them.

17 **Q** Gotcha. Thank you, Mr. Baker. I have no further
18 questions for you.

19 THE COURT: Okay. Mr. Peel?

20 MR. PEEL: All right. Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. PEEL:

23 **Q** Good afternoon, Mr. Baker.

24 **A** How are you, Mr. Peel?

25 **Q** You're an attorney by trade; correct?

1 **A** Well, I've still got my license. I quit practicing about
2 ten years ago.

3 **Q** Okay. How many years did you practice?

4 **A** Fifty.

5 **Q** Fifty. And you were -- were you in Darlington?

6 **A** Well, I had my office in Darlington. I kind of practiced
7 throughout the state. Couldn't live on -- couldn't live off
8 the cases you get in Darlington.

9 **Q** I don't know if they're going to allow two Darlington
10 County boys on here at the same time. There too many smarts
11 in the room.

12 All right. I'm going to try to be brief, too. I
13 appreciate Mr. Saville moving this on. Mr. Baker, it's true
14 that the board has not made any formal complaints to
15 Mr. O'Hara about any of his renters; isn't it?

16 **A** It's my understanding that the prior board, before I was
17 on the board, asked him not to continue. I think that's in
18 your pleading.

19 **Q** Yes, sir. That's not my question. My question is, Are
20 you aware of any complaints about his renters' behavior or
21 otherwise being given to Mr. O'Hara by the board, by a board
22 member or by letter from the board?

23 **A** Not that I know of.

24 **Q** Okay.

25 **A** I'm not saying there haven't been. I don't know.

1 Q And you had some (indiscernible) -- you were talking
2 about COVID a little bit. Your residents aren't required to
3 be tested to enter the building, are they?

4 A No, I don't think there is any requirement that residents
5 be tested.

6 Q You got 192 units in there. How many of those are
7 rented?

8 A I have no idea.

9 Q Okay. Would you say there's a good many rental units in
10 that building?

11 A Longer term rentals, yes.

12 Q Okay. And you'd agree with me that a corporation owns
13 the units -- impossible for a corporation to be -- to occupy a
14 unit as a residence as you're wanting to define it, isn't it?

15 A Well, if they rent it to people who live there, I think
16 that would qualify as a residence. I don't know -- you know,
17 I don't know anything about the commercial rentals.

18 Q Okay. And the term "residence" or "residential" are not
19 defined anywhere in the master deed or bylaws, are they?

20 A Well, I think "residence" is a legal term, from my
21 knowledge.

22 Q Respectfully, I wasn't asking you legal opinion. I was
23 asking if the master deed or the bylaws anywhere define the
24 term residence or residential use, to your knowledge.

25 A Other than as we have referred to them here, no.

4 Q You're aware that Section 27-31-120 says any conveyance
5 or lease of an individual apartment is deemed to also convey
6 or lease the undivided interest of owner in the common
7 elements, the general and in limited and pertaining to the
8 apartment without specifically or particularly referring to
9 same. You know that; right?

10 MR. SAVILLE: Objection, Your Honor. I think that calls
11 for a legal conclusion and legal argument from the witness.

12 THE COURT: I'm going to allow --

13 MR. PEEL: He was --

14 BY MR. PEEL:

15 Q Okay. Mr. Baker, as a lawyer, do you recognize that the
16 governing statute over a horizontal property says that any
17 conveyance or lease of an individual apartment brings with it
18 the right to use the common areas in an unlimited manner?

19 A I'm not that familiar with it. I'm not trying to be
20 evasive, but I don't -- if you say it says that, it says that.

21 Q Okay. And you're also aware that the Horizontal Property
22 Act states that, if a horizontal property regime is going to
23 restrict the rental term of its apartments, it has to place it
24 in the master deed. Are you aware of that?

25 MR. SAVILLE: Objection based on the -- that's not

1 **Q** And you are a lawyer. You are familiar with the
2 Horizontal Property Act; right?

3 **A** Generally.

1 exact -- the exact language pulled from the Horizontal
2 Property Act, is my only objection.

3 MR. PEEL: Okay. I'll read it then. I will correct
4 that, Your Honor. Well, I'll just move us on.

5 BY MR. PEEL:

6 Q Mr. Baker, are you aware of any provision in the master
7 deed setting forth a limitation on the length of rental terms
8 for any of the apartments in Middleborough?

9 A Nothing other than saying they're residences.

10 Q Well, I was asking specifically about rental terms. A
11 length of a lease. Is there anything in the master deed that
12 you're aware of that restricts and puts Mr. O'Hara on notice
13 of the length of time that he can rent a unit for?

14 A Not to my knowledge, other than -- other than the term
15 "residence" itself, which has a legal meaning.

16 Q Okay. All right. Middleborough does not have a customer
17 service desk out front, does it?

18 A Well, that question came up a little bit earlier. We
19 refer, as far as I know, to the people not as security
20 officers but as courtesy officers.

21 Q Do you have a desk upfront like you'd see in a hotel
22 where everybody can go and ask for services or complain about
23 something wrong with the room? I'm not talking about your
24 courtesy officer. I'm saying is there a front desk for
25 services that's open 24 hours a day?

1 **A** Well, not open 24 hours a day but we have a full-time
2 office manager.

3 **Q** And what do they do?

4 **A** Listen to complaints such as that. Schedule repairs that
5 have to be made. The young lady has been there several months
6 and she works full time.

7 **Q** Okay. There's no centralized telephone system in
8 Middleborough, is there?

9 **A** I don't know exactly how it works. We have a Spectrum
10 system. I don't know if that's a telephone system or not.
11 It's a central television service.

12 **Q** Okay. What I mean is, is there a telephone system where
13 I can call the front desk and they can ring Mr. O'Hara's room
14 for me?

15 **A** Not on a -- without placing a call to him, as far as I
16 know.

17 **Q** So everybody has their own direct phone lines and they
18 pay their own phone bills; right? All the units?

19 **A** Yes.

20 **Q** Okay. And Middleborough doesn't offer housekeeping
21 services, does it?

22 **A** For common areas we do but not for individual units.

23 **Q** All right. Thank you.

24 I'm going to try to ask you this: Mr. Baker, Exhibit 10,
25 the Middleborough Horizontal Property Regime rules and

1 regulations, revised January 7, 2019, are you familiar with
2 those?

3 **A** Generally.

4 **Q** Okay. Were you on the board when they were passed?

5 **A** Well, we've had rules and regulations. I know, at one
6 point, when this issue first was being debated by this board,
7 there was discussion of the fact that we needed to clarify
8 what they meant by short-term rentals, and we concluded that
9 the term of 30 days was a minimum that should be allowed.

10 **Q** Were you on the board when these were passed? Did you
11 vote for these to pass in January of 2019?

12 **A** Yes.

13 **Q** Okay. So here's my question to you: When you decided to
14 restrict the term of the rentals and make changes to the use
15 of the common areas and who could use them and how, did y'all
16 put a vote up to the apartment owners to allow them to vote on
17 those changes?

18 **A** I know it was discussed at an owner's meeting. Whether a
19 vote was taken or not, I don't know. I know the board
20 president at that time recommended the 30 days, and that was
21 the vote that was taken on the board.

22 **Q** Okay. Isn't it true that none of these changes in
23 Exhibit 10 were approved by a vote of 67 percent or more of
24 the apartment owners/co-owners in Middleborough?

25 **A** Generally, I would say no but I don't know that. I know

1 we have had some referendum on different questions, but I
2 don't know all the specifics of that. Don't recall it.

3 MR. PEEL: Your Honor, could I have one second, please?

4 THE COURT: Absolutely.

5 (Pause in the proceedings.)

6 MR. PEEL: Okay. Your Honor, that's all the questions I
7 have for Mr. Baker.

8 Thank you, Mr. Baker.

9 THE WITNESS: Thank you.

10 THE COURT: Any redirect, sir?

11 MR. SAVILLE: Yes, Your Honor, I just have one question,
12 if you don't mind indulging me. Thank you.

13 REDIRECT EXAMINATION

14 BY MR. SAVILLE:

15 Q Mr. Baker, Mr. Peel was referring to the 2019, I guess,
16 rules and regulations for Middleborough, but is it your
17 position that what prevents them from actually using the
18 property as they are is actually in the bylaws as an exhibit
19 to the master deed?

20 A You're asking my opinion, that is the term in the master
21 deed is "residences." And in the rules and regulations, it
22 says "residences." And I don't think a motel-type rental, on
23 a one or two basis, qualifies as a residence.

24 Q Okay. That's all I have for you, Mr. Baker. Thank you.

25 MR. PEEL: Nothing further, Your Honor.

1 THE COURT: I'm sorry?

2 MR. PEEL: Nothing further, Your Honor.

3 THE COURT: Okay. Any other witnesses, Mr. Saville?

4 MR. SAVILLE: That is all, Your Honor. Thank you.

5 THE COURT: Okay. Do you all want me to hear from you
6 any legal argument or closing statement?

7 MR. PEEL: Your Honor, I suggest -- I think Mr. Shealy
8 and I have talked about this, that maybe you allow us to
9 submit proposed orders and basically brief the law because I
10 think that's the biggest part of this case anyway.

11 THE COURT: I'm happy to do that. (Indiscernible) how
12 y'all would like to handle it.

13 MR. SAVILLE: Proposed orders sound fine with us, Your
14 Honor.

15 THE COURT: Okay. Let me ask, our court reporter -- Rod,
16 is there anything that you need me to clarify with the
17 parties? If y'all would just -- let me see if there's
18 anything that needs to be -- anything that (indiscernible)
19 clearly or that just needs clarification. And if you'll --
20 Rod, if you can hear me, if you'll just -- okay. I got a
21 message from him saying, "No, ma'am, I don't believe so."

22 So I think that concludes us. Thank y'all very much.
23 Mr. O'Hara and Mr. Baker, thank you for bearing with us and
24 doing this by video, but it's the best we can do right now to
25 try to keep everybody safe. So I appreciate that. I do

1 appreciate all the attorneys. (Indiscernible) very
2 professional (indiscernible) in which I always
3 (indiscernible). And I have to (indiscernible), Mr. Shealy
4 and Mr. Peel, we were in law school together. It's nice to
5 see both of you. Mr. Peel and I were in the same class, and I
6 think -- Mr. Shealy, I think you were a year -- you're younger
7 than we are, I think, by just a tad.

8 So, good to see you-all, and, again, appreciate
9 everything this afternoon. If you will just email me with
10 your proposed orders, and we'll take it from there.

11 MR. PEEL: How quickly would you like to see those,
12 Judge?

13 THE COURT: You know, I have a lot more time on my hands
14 right now than you-all do. We don't have the most gruelling
15 schedule right now, so I have got all the time in the world,
16 frankly, right now. But I know y'all are -- you have other
17 things going on right now. If you can do it, let's say,
18 within ten days. Does that give y'all sufficient time?

19 MR. PEEL: That's fine with me, Judge.

20 THE COURT: Okay. And if you need additional time, just
21 let me know. You know, my only thing is, I don't want to be
22 on the bad list. If I have something under advisement for
23 more than 30 days, I get on the bad list, and I don't want to
24 be on the bad list. As long as we're under 30 days, I'm
25 happy.

1 MR. PEEL: Okay. Thank you.

2 THE COURT: All right. Thank y'all and have a great
3 afternoon and a great weekend.

4 MR. PEEL: Great seeing you.

5 MR. SAVILLE: Thank you, Your Honor.

6 THE COURT: Take care.

7 (At 2:55 p.m., the above hearing concluded.)
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CERTIFICATE OF TRANSCRIBER

CASE/NO.: Kevin O'Hara, et al., vs. Middleborough
2019-CP-40-01231

DATE OF PROCEEDING: January 29, 2021

I, Bobbi J. Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information, and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

Bobbi Fisher

Bobbi J. Fisher, RPR

NCRA Registered Professional Reporter (RPR)

Prepared: May 14, 2021

Deed Prepared By:
 Frederick I. Hall, III, P.A.
 301 Gibson Road
 Lexington, SC 29072
 (803) 957-1243
 FILE: 15-0108

Book 2018-597

2015026040 04/07/2015 11:30 08 313

Deed

Fee: \$10.00 County Tax: \$82.50

State Tax: \$195.00



2015026040 John T. Hopkins II

Richland County R.O.D

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

DEED TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, That G. Darryl Wieland and Manhal Wieland (Hereinafter Called "Grantor (s)") in the State aforesaid, for and in consideration of the Sum of Seventy Five Thousand and 00/100 (\$75,000.00), and to establish a joint tenancy with right of survivorship, in the State aforesaid have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Grantee(s),

Kevin P. O'Hara and Rebekah H. O'Hara
 As JOINT TENANTS, With the RIGHT OF SURVIVORSHIP,
 and not as Tenants in Common:

All that certain Apartment known as Apartment Unit 2-J in Middleborough Horizontal Property Regime as shown on the plans and specifications attached to that certain master deed executed by Middleborough, a Limited Partnership, dated October 14, 1981, and recorded in the Office of the ROD for Richland County in Deed Book D593 at page 92, amended by amendment to master deed dated December 21, 1984 and recorded in said office in Deed Book D722 at Page 551 in the Office of the ROD for Richland County.

This being the identical property conveyed to G. Darryl Wieland & Manhal Wieland by Deed of Greg Smith, dated July 26, 2002 and recorded August 14, 2002 in the Office of the ROD for Richland County in Book 693, at Page 3147 and by Deed of G. Darryl Wieland, dated January 9, 2003 and recorded January 13, 2003 in Book 746, at Page 377.

TMS # 11581-02-10

PROPERTY ADDRESS: 1825 St. Julian Place, Unit 2-J, Columbia, SC 29204

GRANTEE'S ADDRESS: 2807 Osborne Road, Brookhaven, GA 30319

This Deed is also made subject to all zoning and other governmental regulations of the County of Lexington and any other governmental agency (local, state or federal).

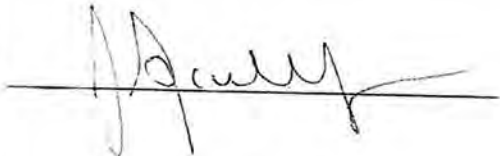
TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to said premises, belonging or in any wise incident or appertaining;

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the Grantee(s) and the Grantee (s) heirs and assigns forever.

And the Grantor(s) do hereby bind the Grantor(s) and the Grantor's successors, heirs and assigns to warrant and forever defend all and singular the before-mentioned premises unto the Grantee(s) and the Grantee(s) heirs and assigns against the Grantor(s) and the Grantor(s) successors, heirs and assigns and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS the Grantor's Hand and Seal this 31st day of March, 2015.

SIGNED, SEALED AND
DELIVERED IN THE PRESENCE OF:



G. Darryl Wieland Manhal Wieland
G. Darryl Wieland, by my true and lawful
Attorney in fact Manhal Wieland



Manhal Wieland
Manhal Wieland

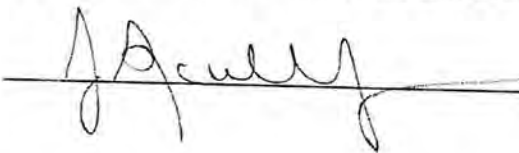
STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

)
)
)

PROBATE

Personally appeared before me the undersigned and made oath that he/she saw the within named Grantors sign, seal and as his/her/ their act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that he/she with the other witness subscribed above witnessed the execution thereof.



SWORN to before me this 31st day of March, 2015.

 (SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 6/30/2020



Deed Prepared By:
Frederick I. Hall, III, P.A.
301 Gibson Road
Lexington, SC 29072
(803) 957-1243
FILE: 17-0980

Book 2240-3178
2017065332 09/01/2017 08 42 53.107
Fee: \$10.00 County Tax: \$38.50 Deed State Tax: \$91.00
2017065332 John T. Hopkins II Richland County R.O.

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

DEED TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, That **Sarah E. Dyches** (Hereinafter Called "Grantor (s)") in the State aforesaid, for and in consideration of the Sum of **Thirty Five Thousand and 00/100 (\$35,000.00)**, and to establish a joint tenancy with right of survivorship, in the State aforesaid have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Grantee(s),

Kevin P. O'Hara and Rebekah H. O'Hara
As **JOINT TENANTS**, With the **RIGHT OF SURVIVORSHIP**,
and not as Tenants in Common:

All that certain apartment known as Apartment Unit No. 14-G in Middleborough Horizontal Property Regime as shown on the Plans and Specifications therefor attached to that certain Master Deed executed by Middleborough, a Limited Partnership, dated October 14, 1981, and recorded in the records of Richland County at Deed Book D-593 at Page 92, amended by amendment to master deed dated December 21, 1984 and recorded in said Office in Deed Book D722 at Page 551 in the Office of the ROD for Richland County.

FOR INFORMATIONAL PURPOSES ONLY:

This being the identical property conveyed to Sara E. Dyches by Deed of Distribution of the Estate of Ann Cook Adams, dated July 18, 2017 and recorded July 18, 2017 in the Office of the ROD for Richland County in Record Book 2228, at Page 2056.

TMS # 11581-14-07

PROPERTY ADDRESS: 1825 St. Julian Place, Unit 14-G, Columbia, SC 29204

GRANTEE'S ADDRESS: 66 Legare Street, Charleston, SC 29401-2439

This Deed is also made subject to all zoning and other governmental regulations of the County of Richland and any other governmental agency (local, state or federal).

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to said premises, belonging or in any wise incident or appertaining;

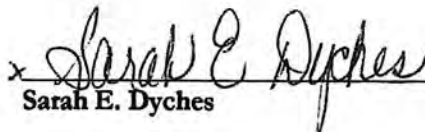
TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the Grantee(s) and the Grantee (s) heirs and assigns forever.

And the Grantor(s) do hereby bind the Grantor(s) and the Grantor's successors, heirs and assigns to warrant and forever defend all and singular the before-mentioned premises unto the Grantee(s) and the Grantee(s) heirs and assigns against the Grantor(s) and the Grantor(s) successors, heirs and assigns and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS the Grantor's Hand and Seal this 25th day of August, 2017.

SIGNED, SEALED AND
DELIVERED IN THE PRESENCE OF:




x  (L.S.)
Sarah E. Dyches

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

) ACKNOWLEDGEMENT

I, a Notary Public of the County and State aforesaid, certify that **Sarah E. Dyches**, personally appeared before me this day and acknowledged the execution of the foregoing instrument for the purposes set forth herein.

Witness my hand and official stamp or seal, this 25th day of August, 2017.

 (L.S.)

Notary Public for South Carolina

My Commission expires: 2-7-23 [Notarial Seal]

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

0 593 PAGE 92



MASTER DEED

MIDDLEBOROUGH

HORIZONTAL PROPERTY REGIME
(An Expandable Regime)

THIS MASTER DEED made by Middleborough, A Limited Partnership ("Grantor"), pursuant to the Horizontal Property Act of South Carolina (the "Act") for the purpose of creating a horizontal property regime and establishing certain easements, covenants and restrictions to run with the land.

WITNESSETH:

ARTICLE I

THE PROPERTY

A. Property. As used herein, the term "Property" means and includes the land hereinafter identified and all improvements and structures now existing or hereafter placed thereon by Grantor and all easements, rights and appurtenances belonging thereto, excluding only those portions of the land and improvements reserved to Grantor for additional Phases II, III and IV.

B. Land. The land ("Land") which is subject to this Master Deed is that certain tract or parcel described in Exhibit "A" attached hereto and consisting of 5.28 acres, excluding only those portions of the Land and Property reserved to Grantor for additional Phases II, III and IV. The Land is owned by Grantor in fee simple and is more particularly described and delineated on the plat recorded in Plat Book X at page 2075 in the office of the R. H. C. for Richland County, South Carolina.

C. Phase I Apartments. Grantor has constructed as part of the Property an eighteen (18) story building covering a total ground area (at grade) of 14,870 square feet and containing a total of 192 residential apartments ("Apartments") and a three (3) deck parking garage covering a total ground area (at grade) of 22,685 square feet, all as shown on the plans and specifications titled "Middleborough High Rise Apartments Federal Housing Administration Project No. 054-00084 SEC. 207 prepared by Love & Cobb Architects and Reed, Fleming & Associates, Inc., Engineers, Columbia, S.C. dated April 3, 1972, as revised, which plans and specifications are incorporated herein by reference. The Apartments consist of 6 types as follows:

Type A. A one-bedroom apartment containing 800 square feet of interior area;

Type B. A two-bedroom apartment containing 1010 square feet of interior area;

Type C. A two-bedroom apartment containing 1050 square feet of interior area;

Type D. A two-bedroom apartment containing 1100 square feet of interior area;

Type E. A two-bedroom apartment containing 1125-1160 square feet of interior area; and

Type F. A three-bedroom apartment containing 1375 square feet of interior area.

Certain types of Apartments exist in two configurations, each of which is the approximate mirror image of the other and Type E apartments contain either 1125 or 1160 square feet as noted. The Apartments are more particularly

described as to number, location, type and configuration on the Plot Plan, the floor plans (the "Floor Plans") of the Apartments filed for record herewith as Exhibits "B-1" through "B-19" attached hereto. Each Apartment encompasses and includes all that portion of the building designated on the Floor Plans as an Apartment and consisting of all living and storage space bounded by the upper surface of the floor slab, by the unexposed surfaces of the drywall or plastering forming interior walls and ceilings, and by the exterior surfaces of windows and window frames and of exterior doors and the door frames; and all flooring, floor covering, tile, plaster, wall board, paint, wall covering, doors, door frames, windows, window frames, cabinets, fixtures, appliances and other building materials within the space so bounded. Each Apartment also includes the heating, air conditioning and ventilating equipment and the ducting, electrical wiring and water and sewer pipes serving such Apartment exclusively, regardless of where situated. The balcony or balconies adjacent to and immediately accessible from an Apartment and screens covering the doors or windows of an Apartment are also part of the Apartment.

D. Common Elements. All portions of the Property not encompassed and included within the various Apartments are part of the common elements (the "Common Elements") of the Property. The Common Elements consist of General Common Elements as hereinafter described.

E. General Common Elements. The General Common Elements include the following:

1. The Land;
2. The foundation, main walls, roof (as now existing or as replaced upon completion and merger of Phase III), halls, reception area, fire stairs, and entrance and exit or communication ways of the building;
3. The compartments or installations of central services such as power, light, refrigeration, reservoirs, water tanks and pumps and the like;
4. The elevators and, in general, all devices or installations existing for common use; and
5. All other elements of the Property rationally of common use or necessary to its existence, upkeep and safety.

F. Values. The value of the Property is \$12,075,200.00, and the value of each individual Apartment is as shown on Exhibit C attached hereto and hereby made a part hereof. The values shown on Exhibit C are fixed for the sole purpose of complying with the Horizontal Property Act and irrespective of the actual values, and shall not prevent Grantor or each Co-owner from fixing a different circumstantial value to his Apartment in all types of acts and contracts.

G. Ownership of Common Elements. Ownership of the Common Elements is apportioned among and appurtenant to the individual Apartments according to the percentages set forth on Exhibit C. The percentage of the undivided interest in the Common Elements shall not be separated from the Apartment to which it appertains and shall be deemed to be conveyed or encumbered with the Apartment even though such interest is not expressly mentioned or described in the deed or other instrument of conveyance. Said percentage also shall not be altered without the acquiescence of all the Co-owners except as provided in Article V, upon the addition of Phases II, III and/or IV or any of them.

H. Name. The name by which the horizontal property regime shall be known is "Middleborough Horizontal Property Regime" (hereinafter sometimes called "Regime").

ARTICLE II

THE COUNCIL

A. Members. Every Co-owner, as hereinafter defined, shall be a member of and constitute the council of Co-owners (the "Council"), an unincorporated association which shall be managed by a board of administration (the "Board of Directors") elected by and from the Co-owners and by a professional management company (the "Manager") if the Board of Directors or the Council so elect.

D. Co-owner. As used herein, the term "Co-owner" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns an Apartment.

C. Bylaws. The Council and the administration of the Property shall be governed by the bylaws (the "Bylaws") annexed hereto as Exhibit D. The Bylaws may be modified or amended only in the manner set forth in Article IX hereof.

D. Voting. On all matters relating to the Council or to the Property upon which a vote of the Co-owners is conducted, the Co-owners shall vote in proportion to their respective percentage interests in the Common Elements so that there shall be appurtenant to each type of Apartment one vote (or percentage thereof) equal to the percentage ownership attributable to such Apartment. The total number of votes appurtenant to all Apartments is 100. The affirmative vote of a Majority of the Co-owners, as hereinafter defined, shall be required to adopt decisions. All votes attributable to a single Apartment must be cast together and may not be split.

E. Majority of the Co-owners. Whenever used in this Master Deed or the Bylaws, the term "Majority of the Co-owners" means Co-owners entitled to cast a total of more than 50 votes.

F. Interim Rights of Grantor. Notwithstanding anything to the contrary in this Master Deed or the Bylaws, until 120 days after Grantor or its successor in interest owns fewer than twenty-five (25 %) percent of the Apartments of Phase I or until the passage of three (3) years from the date of recording this Master Deed, whichever first occurs, there shall be not more than three (3) directors and Grantor or its successors shall be entitled to designate two (2) of such directors, and any successor to such director, all as is provided in the Bylaws.

ARTICLE III

COMMON EXPENSES

A. Liability of Co-owners. The Co-owners of the Apartments are bound to contribute in proportion to their respective interests in the Common Elements toward the following expenses ("Common Expenses"):

1. Expenses of administration and of maintenance and repair of the General Common Elements and, in proper cases, of the Limited Common Elements; and

2. Any other expense lawfully agreed upon by the Council.

The liability of each Co-owner for the Common Expenses shall be limited to the amounts for which he is assessed from time to time in accordance with the Horizontal Property Act, this Master Deed and the Bylaws. No Co-owner may exempt himself from contributing toward the Common Expenses by waiver of the use or enjoyment of the Common Elements or by abandonment of his Apartment. Monthly assessments shall commence and be due and payable upon the recordation of this Master Deed.

B. Liability of Purchaser. The purchaser of an Apartment (other than a purchaser at a foreclosure sale as described below in paragraph E) shall be jointly and severally liable with the seller pursuant to paragraph A above up to the time of the conveyance, without prejudice to the purchaser's right to recover from the seller the amounts paid by the purchaser as such joint debtor. The Council shall provide for the issuance and shall issue to any purchaser, upon his request, a statement of such amounts due by the seller of any Apartment, and the purchaser's liability under this paragraph shall be limited to the amount as set forth in the statement.

C. Sale of Apartment. Upon the sale or conveyance of an Apartment, all unpaid assessments against a Co-owner for his pro rata share of the Common Expenses shall first be paid out of the sales price or by the acquirer in preference over any other assessments or charges of whatever nature except the following:

1. Assessments, liens and charges for taxes past due and unpaid on the Apartment; and

2. Payments due under mortgage instruments or encumbrances duly recorded prior to the time the assessments for Common Expenses became payable.

D. Lien on Apartment. All sums assessed by the Manager or the Board of Directors for the share of the Common Expenses chargeable to any Apartment shall constitute a lien on such Apartment prior and superior to all other liens except only (i) tax liens on the Apartment in favor of any assessing unit, and (ii) mortgage and other lien encumbering the Apartment, duly recorded prior to the time the assessment for such Common Expenses became payable. Such lien may be foreclosed by suit by the Manager or the Board of Directors, acting on behalf of the Council, in like manner as a mortgage of real property. In any such foreclosure the Co-owner of the Apartment shall be required to pay a reasonable rental for the Apartment after the commencement of the foreclosure action, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same. The Manager or the Board of Directors, acting on behalf of the Council, shall have power to bid in the Apartment at any foreclosure sale and to acquire, hold, lease, mortgage, encumber and convey the same. Suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or waiving the lien securing the same.

E. Foreclosure Purchaser. Where the mortgagee of any mortgage of record or other purchaser of an Apartment obtains title to the Apartment as a result of foreclosure of such mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of the Common Expenses or assessments by the Co-owners chargeable to such Apartment accruing after the date of recording such mortgage but prior to the acquisition of title to such Apartment by such acquirer. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all of the Co-owners, including such acquirer, his successors and assigns.

F. Records. The Manager of the Board of Directors shall keep, or cause to be kept, a book with a detailed account, in chronological order, of the receipts and expenditures affecting the Property and its administration and specifying the maintenance and repair expenses of the Common Elements and any other expenses incurred. Both the book and the vouchers accrediting the entries made thereupon shall be available for examination by all the Co-owners or mortgage holder or insurer at convenient hours on working days that shall be set and announced for general knowledge.

ARTICLE IV

EASEMENTS, COVENANTS AND RESTRICTIONS

A. Use of Property. Each Co-owner shall be entitled to the exclusive ownership and possession of his Apartment and may use the Common Elements in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of other Co-owners.

B. Utility Easements. There shall be appurtenant to each Apartment a non-exclusive easement for use of all pipes, wires, cables, conduits, utility lines, flues and ducts serving such Apartment and situated in any other Apartment. Each Apartment shall be subject to an easement in favor of other Apartments for use of all pipes, wires, cables, conduits, utility lines, flues and ducts situated in such Apartments and serving such other Apartments.

C. Encroachments. If any portion of the Common Elements now encroaches upon any Apartment, or if any Apartment now encroaches upon any other Apartment or upon any portion of the Common Elements, or if any such encroachment shall occur hereafter as a result of (i) settling of an Apartment or Apartments; (ii) repair, alteration or reconstruction of the Common Elements made by or with the consent of the Council; (iii) repair or reconstruction of an Apartment or Apartments following damage by fire or other casualty; or (iv) 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 Horizontal Property Act.

D 593 PAGE 95

D. Right of Access. The Council shall have the irrevocable right, to be exercised by the Manager or the Board of Directors, to have access to each Apartment from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Apartment.

E. Maintenance of Common Elements. The necessary work of maintenance, repair and replacement of the Common Elements and the making of any additions or improvements thereto shall be carried out only as provided in the Horizontal Property Act, this Master Deed and the Bylaws.

F. Prohibited Work. No Co-owner shall do any work which would jeopardize the soundness or safety of the Property, reduce the value thereof or impair any easement or hereditament without in every such case unanimous consent of all other Co-owners affected being first obtained.

G. Partition. The Common Elements shall remain undivided and shall not be the object of an action for partition or division of the co-ownership. Any covenant to the contrary shall be void.

ARTICLE V

MERGER OF ADDITIONAL PHASES

A. Additional Property. This is an expandable project. Portions of the grounds, the first floor, the basement and the roof of the building containing the Apartments hereby subjected to the Act, which are identified in Exhibit A as "Reserved to Grantor For Future Use" are excluded from the Middleborough Horizontal Property Regime by Grantor. In the future Grantor may wish to expand this Regime by adding such additional property (modified or constructed as additional apartments, commercial space or penthouses) in one or more Phases as hereinafter described. The maximum number of additional units which may be annexed to the Regime established hereby shall not exceed thirty-six (36) apartment units or commercial units in the aggregate on the first floor and basement (Phase II); twelve (12) penthouse apartment units constructed on the roof of the building (Phase III); and, additional construction of a building or buildings containing not more than thirty-six (36) units on the reserved forty-two one hundredths (.42) acre located at the southwestern corner of the Land (Phase IV). The aggregate, total maximum square footage for Phases II, III and IV, which Grantor may add to this Regime shall not exceed 85,771 square feet and the aggregate total value of the additional property (determined solely for purposes of complying with the Act) shall not exceed \$5,282,900. Any additional apartment or commercial units shall be constructed of equal or superior quality to those subjected to this Regime in this Phase I and shall be substantially completed prior to annexation to this Phase I.

B. Amendments to Master Deed. In the event Grantor, in its sole discretion, elects to proceed to enlarge this Regime by adding Phase II, Phase III or Phase IV, or any of them, in any order, or parts of any of them, in any order, Grantor shall execute an amendment or amendments to this Master Deed which shall be filed for record in the R.M.C. Office for Richland County, South Carolina not later than seven (7) years from the date of recording this Master Deed. Any such amendment or amendments shall fully describe the property being added to this Regime and submit such property to all of the provisions of this Master Deed and exhibits attached hereto, as amended. Such amendment or amendments expanding this Regime, as aforesaid, may be accomplished unilaterally by Grantor without the approval or consent of any Co-owner, or mortgagee of any Co-owner, of the Regime as constituted at the time of such amendment. Upon exercise of any such option to expand, as aforesaid, the provisions of this Master Deed shall then be understood and construed as embracing Phase I property and such property as may be described in such amendment, together with all improvements constructed thereon.

C. Reversion of Additional Property to Regime. Should the expansion options not be exercised within the time specified, they shall in all respects expire and be of no further force and effect and/or should Grantor earlier declare his intention to release such reserved property to this Regime by amendment recorded as aforesaid, then the property so reserved to Grantor shall become and be deemed thereafter to be part of the Common Elements.

L D 593 PAGE 97

D. Rights and Obligations of New Co-owners. Immediately upon recording the amendment or amendments adding an additional Phase or Phases, or any part thereof, Co-owners of Apartments or commercial space within such property shall assume all rights and obligations which Co-owners of Phase I may have hereunder and shall bear their proportionate share of the common expenses payable by existing Co-owners, and the percentage ownership of existing Co-owners in common areas shall change in direct proportion to the percentage that the value of the additional property (determined solely for purposes of complying with the Act to be \$61.59 per square foot of interior area) bears to the sum of the value of the property hereby subjected to condominium ownership and the value of the additional property.

E. Elevator Service to Phase III. As part of the additional phase encompassing the proposed penthouse apartment units (Phase III), Grantor reserves the right to add to the interior or exterior of the building elevator service to the penthouse apartment units and/or to extend the existing elevator service to the penthouse apartment units.

F. Replacement of Tennis Court in Phase IV. As part of the horizontal property regime encompassing the proposed new construction of Apartments in Phase IV, Grantor would necessarily use the property where the existing tennis court is located. Prior to beginning construction on such property Grantor shall build or cause to be built, at its sole expense, a tennis court of similar quality on the existing garage or if Grantor elects not to build, or is unable to build on the existing garage, on another portion of the Common Elements designated by the Directors of the Council of Co-owners.

G. Reservation of Construction and Maintenance Easement. As part of the reservation of the option in Grantor to add additional property to this Regime, Grantor reserves unto itself, and its successors and assigns, easements for ingress and egress over, under and across all Common Elements and such other reasonable right of access to and use of the Common Elements subjected to this Regime as may be necessary for the construction, maintenance and marketing of the additional Apartment units or commercial units.

H. Taxes and Assessments Prior to Merger. Prior to filing any amendment to this Master Deed adding additional property to this Regime, Grantor shall be responsible for all taxes and other assessments relating to the property reserved to Grantor.

ARTICLE VI

LIENS

A. Attachment. No lien arising subsequent to the recording of this Master Deed, and while the Property remains subject to the Horizontal Property Act, shall be effective against the Property. During such period, liens or encumbrances shall arise or be created only against each Apartment and the percentage of undivided interest in the Common Elements appurtenant to such Apartment 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 furnished with the consent or at the request of a Co-owner or his agent or his contractor or subcontractor shall be the basis for the filing of a mechanic's or materialman's lien against the Apartment or any other property of any other Co-owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by the Co-owner of any Apartment in the case of emergency repairs thereto, Labor performed or materials furnished for the Common Elements, if duly authorized by the Council, the Manager or the Board of Directors in accordance with the Horizontal Property Act, this Master Deed or the Bylaws, shall be deemed to be performed or furnished with the express consent of each Co-owner, and shall be the basis for the filing of a mechanic's or materialman's lien against each of the Apartments and shall be subject to the provisions of paragraph B below.

B. Discharge. In the event a lien against two or more Apartments becomes effective, the Co-owners of the separate Apartments may remove their Apartments and the percentage of undivided interest in the Common Elements appurtenant to such Apartments from the lien by any payment of the fractional or proportional amounts attributable to each of the Apartments affected. Such

D 593 PAGE 98

individual payment shall be computed by reference to the percentages appearing in this Master Deed. Subsequent to any such payment, discharge or other satisfaction, the Apartment 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 rights against any Apartment and the percentage of undivided interest in the Common Elements appurtenant thereto not so paid, satisfied or discharged.

C. Taxes. Taxes, assessments and other charges of this State, or of any political subdivision, or of any special improvement district, or of any other taxing or assessing authority shall be assessed against and collected on each individual Apartment, each of which shall be carried on the tax books as a separate and distinct entity for that purpose, and not on the buildings or Property as a whole. No forfeiture or sale of the buildings or Property as a whole for delinquent taxes, assessments or charges shall ever divest or in anywise affect the title to an individual Apartment so long as taxes, assessments and charges on the individual Apartment are currently paid.

ARTICLE VII

INSURANCE

The Council shall insure the Property against risks, without prejudice to the right of each Co-owner to insure his Apartment on his own account, for his own benefit.

ARTICLE VIII

RECONSTRUCTION

A. When Required. In case of fire or any other disaster, the indemnity from any insurance obtained by the Council shall, except as hereinafter provided, be applied to reconstruct the Property. Reconstruction shall not be compulsory where it comprises the whole or more than two-thirds (2/3) of the Property. In such case, and unless otherwise unanimously agreed upon by the Co-owners, the indemnity shall be delivered pro rata to the Co-owners entitled to it in accordance with the provision made in the Bylaws or in accordance with the decision of three-fourths (3/4) of the Co-owners if there is no Bylaws provision. Should it be proper to proceed with the reconstruction, the provision for such eventuality made in the Bylaws shall be observed, or, in lieu thereof, the decision of the Council shall prevail.

B. Costs. Where the Property is not insured or where the insurance indemnity is insufficient to cover the cost of reconstruction, the rebuilding costs shall be paid by all the Co-owners directly affected by the damage, in proportion to the value of their respective Apartments, or as may be provided in the Bylaws; and if any one or more of those composing the minority shall refuse to make such payment, the majority may proceed with the reconstruction at the expense of all the Co-owners benefited thereby, upon proper resolution setting forth the circumstances in the case and the cost of the work, with the intervention of the Council. The provisions of this paragraph may be changed by the unanimous resolution of the parties concerned, adopted subsequent to the date on which the fire or other disaster occurred.

ARTICLE IX

AMENDMENTS

A. Master Deed. Except as provided in Article V which provides for Amendments by Grantor to add additional Phases, this Master Deed may be amended only by written agreement of all the Co-owners.

B. Bylaws. The Bylaws may be amended from time to time by the affirmative vote of Co-owners entitled to cast a total of no fewer than 75 votes.

C. Recording. No amendment to this Master Deed or the Bylaws shall be effective unless and until recorded as required by the Horizontal Property Act.

*Change Master Deed
100% Co-owners*

ARTICLE X

MISCELLANEOUS

U 593 PAGE 99

A. Application. All Co-owners, tenants of Co-owners, employees of Co-owners and tenants, or any other persons that may in any manner use the Property or any part thereof shall be subject to the Horizontal Property Act and to this Master Deed and the Bylaws.

B. Compliance. Each Co-owner shall comply strictly with the Bylaws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions, and restrictions set forth in this Master Deed or in the deed to the Apartment of such Co-owner. Failure to comply with any of the same shall be ground for a civil action to recover sums due for damages or injunctive relief, or both, maintainable by the Manager or the Board of Directors on behalf of the Council or, in a proper case, by an aggrieved Co-owner.

C. Waiver. No provision 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.

D. Conflicts. This Master Deed is executed to comply with the requirements of the Horizontal Property Act, and in the event that any of the provisions hereof conflict with the provisions of the Horizontal Property Act, the Horizontal Property Act shall control.

E. 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.

F. 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 provision hereof.

G. 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.

H. Termination. All the Co-owners or the sole Co-owner of the Property may waive the horizontal property regime and regroup or merge the records of the Apartments with the Common Elements, provided that the Apartments are unencumbered or, if encumbered, that the creditors on whose behalf the encumbrances are recorded agree to accept as security the undivided portions of the Property owned by the debtors.

IN WITNESS WHEREOF, Grantor has executed this Master Deed this 14th day of OCTOBER, 1981.

Signed, sealed and delivered
in the presence of:

William C. Boyd
Witness

Henry A. Moise
Witness

Middleborough, A Limited Partnership

By: Park Tower, Inc., its General Partner

By: *Paul E. Pincus*
its VICE-PRESIDENT

and *William J. Chary*
its SECRETARY

U 593 PAGE 99

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PROBATE

D 593 PAGE 100

Before me, the undersigned notary public, appeared HENRY L. MOISE, who being duly sworn, said that he saw Middleborough, a Limited Partnership by Park Tower, Inc., its General Partner by PAUL E. PINSON its VICE-PRESIDENT and WILLIAM J. CLEARY its SECRETARY attest and seal the same, and said partnership, by said General Partner, deliver said Master Deed as its act and deed, and that HE he with WILLIAM C. BOYD, JR. witnessed the same.

SWORN to before me this the
14th day of OCTOBER, 1981

William C. Boyd, Jr.
Notary Public for South Carolina

My Commission Expires 8/16/89

Henry L. Moise

D 593 PAGE 100

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

AMENDMENT TO MASTER DEED OF
MIDDLEBOROUGH HORIZONTAL
PROPERTY REGIME

FILED
REGISTERED BY PUBLIC CLERK
CLARK L. STONE, JR.

89A DEC 21 PM 1:35

THIS AMENDMENT TO MASTER DEED, executed this 21st day of December, 1984, by Middleborough, A Limited Partnership ("Grantor").

WITNESSETH:

WHEREAS, Grantor established that certain horizontal property regime located in Richland County, South Carolina, known as Middleborough Horizontal Property Regime (the "Regime") by executing and recording that certain master deed (the "Master Deed") dated October 14, 1981, and recorded in the Office of the R.M.C. for Richland County, South Carolina, in Deed Book D593 at Page 92; and

WHEREAS, Article V of the Master Deed provides for merger, at the option of Grantor, of additional phases into the Regime, including, but not limited to, adding to the Regime the ground floor of the building in which the Regime is located; and

WHEREAS, Grantor desires to add the ground floor of the aforesaid building to the Regime as residential and commercial Apartments pursuant to the terms of the Master Deed and as further provided hereinbelow.

NOW, THEREFORE, pursuant to its rights to expand the Regime by adding additional phases thereto in accordance with and pursuant to the terms of the Master Deed, Grantor does hereby amend the Master Deed as follows:

1. Addition to Regime. Grantor hereby adds to the Regime the real property consisting of the ground floor of the Regime building, with the exception of such portions of the ground floor as are already common elements of the Regime. The portion of the ground floor added to the Regime hereby is more specifically described and shown as Apartments G-1, G-2, G-3, G-4, G-5 and G-6 on the floor plan (the "Floor Plan") of the ground floor attached hereto as Exhibit A and hereby made a part hereof (the portion of the ground floor added to the Regime shall be referred to hereinafter as the "Phase II-A Apartments"). The Phase II-A Apartments are hereby submitted to all of the provisions of the Master Deed and the exhibits attached thereto, as such may have been amended or may be amended from time to time. Grantor, for itself and its successors and assigns, hereby assumes as fee simple owner of the Phase II-A Apartments all rights and obligations of a Co-Owner under the Regime.

2. Use of Phase II-A Apartments. All Phase II-A Apartments may be used for residential purposes, including, but not limited to, rental residential space, or any commercial purpose allowed by applicable law, including, but not limited to, use of such Apartments as commercial retail space or commercial office space.

3. Number and Description of Phase II-A Apartments; Percentage Interest in Common Elements.

(a) The Phase II-A Apartments shall consist of six (6) Apartments designated as Apartment Unit Nos. G-1, G-2, G-3, G-4, G-5 and G-6 of the Regime. The Phase II-A Apartments are more particularly described as to number, location, type and configuration on the Floor Plan. Each Phase II-A Apartment encompasses and includes all that portion of the building designated on the Floor Plan as an Apartment and consisting of all living and storage space bounded by the upper surface of the floor slab, by the unexposed surfaces of the drywall or plastering forming interior walls and ceilings, and by the exterior surfaces of windows and window frames and of exterior doors and the door frames; and all flooring, floor covering, tile, plaster, wall board, paint, wall covering, doors, door frames, windows, window frames, cabinets, fixtures, appliances and other building materials within the space so bounded. Each Phase II-A Apartment also includes the heating, air conditioning and ventilating equipment and the ducting, electrical wiring and water and sewer pipes serving such Apartment exclusively, regardless of where situated. The

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exterior court adjacent to a Phase II-A Apartment and screens covering the doors or windows of a Phase II-A Apartment are also part of the Phase II-A Apartment.

(b) The value of the Regime property including the Phase II-A Apartments is \$12,460,137.50, and the value of the Phase II-A Apartments and all other Apartments is as shown on Exhibit B attached hereto and hereby made a part hereof. The values shown on Exhibit B are fixed for the sole purpose of complying with the South Carolina Horizontal Property Act and irrespective of the actual values, and shall not prevent Grantor or each Co-Owner from fixing a different circumstantial value to his Apartment in all types of acts and contracts.

(c) Ownership of the Common Elements with the addition of the Phase II-A Apartments is apportioned to the individual Apartments according to the percentages set forth on Exhibit B.

3. Apartment Entrances. Each Phase II-A Apartment fronts on the ground level of the southeastern side of the Regime building. Some Phase II-A Apartments have existing doors to the outside of the Regime building and some Phase II-A Apartments have only exterior glass walls. The Owner of each Phase II-A Apartment shall have the option at any time, at his own expense, to cut one (1) or more doors to the outside on the southeastern side of the Regime building for each Phase II-A Apartment, provided that such doors shall be designed in keeping with the existing design and appearance of the exterior of the Regime building.

4. Additional Phases. The Master Deed provides for the addition to the Regime of Phase II, which would include both the ground floor, herein designated the Phase II-A Apartments, and the first floor of the Regime building. Pursuant to Article V of the Master Deed, which provides in part that Grantor may elect to add Phase II, Phase III or Phase IV, or parts of any of them, Grantor has elected to add only the portion of Phase II described hereinabove as the Phase II-A Apartments to the Regime at this time. Grantor reserves its rights under the Master Deed to add the remainder of Phase II, as well as Phase III and Phase IV, or any part of any of them, to the Regime in accordance with the terms of the Master Deed, and no provision hereof shall be deemed a modification or waiver of such rights.

5. Miscellaneous. Except as otherwise provided herein, the terms used herein have the same meaning as provided in the Master Deed. Except as modified hereby, the terms and provisions of the Master Deed are incorporated herein by reference.

IN WITNESS WHEREOF, Grantor has executed this Amendment to Master Deed on the date first above written.

Signed, Sealed and Delivered
in the Presence of:

Middleborough, A Limited Partnership

By: Park Tower, Inc., Its General Partner

By: William H. Thayer
Its Vice-President

(CORPORATE SEAL)

John B. Maffett
Barton Williams

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ED 722 PAGE 553

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PROBATE

Before me, the undersigned notary public, personally appeared Benton D. Williams, who, being sworn, deposed and said that he saw Middleborough, A Limited Partnership, by Park Tower, Inc., its General Partner, by William H. Thoms its Vice President, sign, seal and deliver the foregoing Amendment to Master Deed and that he, together with John B. McArthur, witnessed the execution thereof.

SWORN TO and subscribed
before me this 21st day
of December, 1984.

Benton Williams

John B. McArthur (SEAL)
Notary Public for South Carolina
My commission expires 2/1/92

ED 722 PAGE 553

ED 722 ^{NGT} 555

Apartment #	Assigned Value	Percentage Interest In Common Elements Expressed As A Percentage	Apartment #	Assigned Value	Percentage Interest In Common Elements Expressed As A Percentage
2A	\$55,800	.44783	6A	\$57,800	.46388
2B	60,300	.48394	6B	62,300	.49999
2C	58,925	.47291	6C	60,925	.48896
2D	58,925	.47291	6D	60,925	.48896
2E	60,300	.48394	6E	62,300	.49999
2F	42,500	.34109	6F	44,500	.35714
2G	42,500	.34109	6G	44,500	.35714
2H	62,275	.49979	6H	64,275	.51585
2I	58,400	.46869	6I	60,400	.48475
2J	58,400	.46869	6J	60,400	.48475
2K	62,275	.49979	6K	64,275	.51585
2L	67,500	.54173	6L	69,500	.55778
3A	56,300	.45184	7A	58,300	.46789
3B	60,800	.48796	7B	62,800	.50401
3C	59,425	.47692	7C	61,425	.50100
3D	59,425	.47692	7D	61,425	.50100
3E	60,800	.48796	7E	62,800	.50401
3F	43,000	.34510	7F	45,000	.36115
3G	43,000	.34510	7G	45,000	.36115
3H	62,775	.50381	7H	64,775	.51986
3I	58,900	.47271	7I	60,900	.48876
3J	58,900	.47271	7J	60,900	.48876
3K	62,775	.50381	7K	64,775	.51986
3L	68,000	.54754	7L	70,000	.56179
4A	56,800	.45585	8A	58,800	.47190
4B	61,300	.49197	8B	63,300	.50802
4C	59,925	.48093	8C	61,925	.49698
4D	59,925	.48093	8D	61,925	.49698
4E	61,300	.49197	8E	63,300	.50802
4F	43,500	.34911	8F	45,500	.36516
4G	43,500	.34911	8G	45,500	.36516
4H	63,275	.50782	8H	65,275	.52387
4I	59,400	.47672	8I	61,400	.49277
4J	59,400	.47672	8J	61,400	.49277
4K	63,275	.50782	8K	65,275	.52387
4L	68,500	.54975	8L	70,500	.56580
5A	57,300	.45987	9A	59,300	.47592
5B	61,800	.49598	9B	63,800	.51203
5C	60,425	.48495	9C	62,425	.50100
5D	60,425	.48495	9D	62,425	.50100
5E	61,800	.49598	9E	63,800	.51203
5F	44,000	.35313	9F	46,000	.36918
5G	44,000	.35313	9G	46,000	.36918
5H	63,775	.51183	9H	65,775	.52788
5I	59,900	.48073	9I	61,900	.49678
5J	59,900	.48073	9J	61,900	.49678
5K	63,775	.51183	9K	65,775	.52788
5L	69,000	.55377	9L	71,000	.56982

ED 722 ^{NGT} 555

Apartment #	Assigned Value	Common Elements Expressed As A Percentage	Apartment #	Assigned Value	Common Elements Expressed As A Percentage
10A	\$60,100	.48234	15A	\$65,700	.52728
10B	64,600	.51845	15B	70,200	.56340
10C	63,225	.50742	15C	68,825	.55236
10D	63,225	.50742	15D	68,825	.55236
10E	64,600	.51845	15E	70,200	.56340
10F	46,800	.37560	15F	52,400	.42054
10G	46,800	.37560	15G	52,400	.42054
10H	66,575	.53430	15H	72,175	.57925
10I	62,700	.50320	15I	68,300	.54815
10J	62,700	.50320	15J	68,300	.54815
10K	66,575	.53430	15K	72,175	.57925
10L	71,800	.57624	15L	77,400	.62118
11A	60,900	.48876	16A	67,700	.54333
11B	65,400	.52487	16B	72,200	.57945
11C	64,025	.51384	16C	70,825	.56841
11D	64,025	.51384	16D	70,825	.56841
11E	65,400	.52487	16E	72,200	.57945
11F	47,600	.38202	16F	54,400	.43659
11G	47,600	.38202	16G	54,400	.43659
11H	67,375	.54072	16H	74,175	.59530
11I	63,500	.50963	16I	70,300	.56420
11J	63,500	.50963	16J	70,300	.56420
11K	67,375	.54072	16K	74,175	.59530
11L	72,600	.58266	16L	79,400	.63723
12A	61,700	.49518	17A	69,700	.55938
12B	66,200	.53129	17B	74,200	.59550
12C	64,825	.52026	17C	72,825	.58446
12D	64,825	.52026	17D	72,825	.58446
12E	66,200	.53129	17E	74,200	.59550
12F	48,400	.38844	17F	56,400	.45264
12G	48,400	.38844	17G	56,400	.45264
12H	68,175	.54714	17H	76,175	.61135
12I	64,300	.51605	17I	72,300	.58025
12J	64,300	.51605	17J	72,300	.58025
12K	68,175	.54714	17K	76,175	.61135
12L	73,400	.58908	17L	81,400	.65328
14A	63,700	.51123	18A	71,700	.57544
14B	68,200	.54735	18B	76,200	.61155
14C	66,825	.53631	18C	74,825	.60052
14D	66,825	.53631	18D	74,825	.60052
14E	68,200	.54735	18E	76,200	.61155
14F	50,400	.40449	18F	58,400	.46870
14G	50,400	.40449	18G	58,400	.46870
14H	70,175	.56320	18H	78,175	.62740
14I	66,300	.53210	18I	74,300	.59630
14J	66,300	.53210	18J	74,300	.59630
14K	70,175	.56320	18K	78,175	.62740
14L	75,400	.60513	18L	83,400	.66933
- Ground Floor					
61	88,381.64	.70931			
62	67,441.05	.54125			
63	47,732.25	.38308			
64	23,404.20	.18783			
65	74,523.90	.59810			
66	83,454.45	.66977			

ED 722 PAGE 556

BYLAWS
OF
MIDDLEBOROUGH,
HORIZONTAL PROPERTY REGIME

THESE BYLAWS of Middleborough Horizontal Property Regime are promulgated pursuant to the Horizontal Property Act of South Carolina (the "Horizontal Property Act") for the purpose of governing Middleborough Council of Co-owners (the "Council") and the administration of Middleborough (the "Property"), which has been submitted to a horizontal property regime. The terms used herein are defined in the Master Deed by which the Property was so submitted, and these Bylaws incorporate and are subject to the provisions of said Master Deed.

ARTICLE I

CO-OWNERS

A. Membership. Every Co-owner shall be a member of the Council. A person who holds title to an Apartment merely as security for payment of a debt shall not be entitled to exercise the rights of a Co-owner unless such person holds a proxy conferring such rights.

B. Voting. Votes of the Co-owners shall be cast only at meetings of the Co-owners convened in accordance with these Bylaws. The affirmative vote of a Majority of the Co-owners, as hereinafter defined, shall be required to adopt decisions.

C. Majority of the Co-owners. As used in these Bylaws, the term "Majority of the Co-owners" means Co-owners entitled to cast a total of more than fifty (50) votes.

D. Quorum. A Majority of the Co-owners present in person or by proxy shall constitute a quorum for the transaction of business at meetings of the Co-owners.

E. Consents. Any action which may be taken by a vote of the Co-owners may also be taken by written consent to such action signed by all Co-owners.

F. Annual Meetings. An annual meeting of the Co-owners shall be held on the second Tuesday in March of each year or at such other time during each year as may be determined by a Majority of the Co-owners. Any business which is appropriate for action of the Co-owners may be transacted at an annual meeting.

G. Special Meetings. Special meetings of the Co-owners may be called at any time by the President of the Council or by a majority of the Board of Directors and shall be called upon the written request of a Majority of the Co-owners. Only such business as is stated in the notice of meeting shall be transacted at a special meeting unless all Co-owners waive notice of any additional business.

H. Notice of Meetings. Written notice of every annual or special meeting of the Co-owners stating the time, date and place of the meeting and, in the case of a special meeting, the business proposed to be transacted shall be given to every Co-owner not fewer than ten (10) nor more than thirty (30) days in advance of the meeting. Failure to give proper notice of a meeting of the Co-owners shall not invalidate any action taken at such meeting unless a Co-owner who 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 Co-owner objects shall be void.

I. Waiver of Notice. Waiver of notice of a meeting of the Co-owners shall be deemed the equivalent of proper notice. Any Co-owner may in writing waive notice of any meeting of the Co-owners either before or after such meeting. Attendance at a meeting by a Co-owner, whether in person or by proxy, shall be deemed waiver by such Co-owner of notice of the time, date and place thereof unless such Co-owner specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall constitute deemed notice of all business transacted

10 593 PAGE 128

thereof unless objection or lack of notice is raised before the business which proper notice was not given is put to a vote.

J. Place of Meeting. All meetings of the Co-owners shall be held upon the Property or at such other place which is convenient to the Co-owners as the President of the Council or the Board of Directors may direct.

K. Adjournment. Any meeting of the Co-owners may be adjourned from time to time for periods not exceeding forty-eight (48) hours by vote of Co-owners holding a majority of the votes represented at such meeting, regardless of whether a quorum is present. Any business which 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.

L. Order of Business. The order of business at all meetings of Co-owners shall be as follows:

1. Roll Call;
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. Election of inspectors of election (when required);
8. Election of Directors (when required);
9. Unfinished business;
10. New business.

M. Minutes of meetings. The Secretary of the Council shall prepare, or cause to be prepared, and keep accurate minutes of every meeting of the Co-owners. Such minutes shall be made available for examination and copying by any Co-owner at any reasonable time.

N. Who May Act for a Co-owner. 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 trust shall act by any trustee thereof, and any other legal entity shall act by any managing agent thereof. When a Co-owner consists of two or more persons, any one of such persons shall be deemed authorized to act for all in taking any action on behalf of such Co-owner unless another of such persons objects, in which case the votes which such Co-owner would otherwise be entitled to cast may not be cast.

O. Proxies. Any Co-owner may by written proxy designate an agent to cast the votes of such Co-owner. Unless otherwise stated therein, a proxy shall be deemed to confer the authority to execute consents and waivers and to exercise the right to examine the books and records of the Council. A proxy may be revocable or irrevocable but shall be deemed revocable at will unless otherwise specified therein. No proxy shall be honored until delivered to the Secretary of the Council.

ARTICLE 11

BOARD OF DIRECTORS

A. Form of Administration. The administration of the Council and the Property shall be vested in a Board of Directors consisting of not less than three (3) nor more than five (5) Directors elected from the Co-owners. Provided however, that notwithstanding anything to the contrary in these Bylaws or in the Master Deed or in any other document, until 120 days after Middleborough, a Limited Partnership, as grantor of the Master Deed subjecting

the Property to the Horizontal Property Act of South Carolina, or its successor in interest in the Property, owns fewer than twenty-five (25%) percent of the Apartments in the Property encompassing Phase I or until the passage of three (3) years from the date of recording of the Master Deed for the regime, whichever first occurs, there shall be not more than three directors and Middleborough limited partnership or its successors shall be entitled to designate two of such directors, and any successors to such directors due to vacancy for any reason. The third directorship shall remain vacant until Middleborough limited partnership or its successor has conveyed Apartments in Phase I entitled to more than sixty-seven (67%) percent of the regime votes. Upon such conveyance of Apartments representing more than sixty-seven (67%) percent of the regime votes, the third director shall be elected by a majority vote (according to percentage interest as provided in the Master Deed) of Apartments owned by persons other than Middleborough limited partnership, or its successor.

B. Authorities and Duties. The authorities and duties of the Board of Directors shall include the following:

1. To provide for the security of the Property;
2. To provide for the maintenance, repair and replacement of the Common Elements;
3. To employ and discharge the persons necessary for the operation, maintenance, repair and replacement of the Common Elements;
4. To collect from the Co-owners their respective shares of the Common Expenses;
5. To insure the Property as hereinafter provided;
6. To enact reasonable regulations governing the operation and use of the Property;
7. To enforce the terms of the Horizontal Property Act, the Master Deed and these Bylaws and the Regulations promulgated pursuant hereto as hereinafter provided; and
8. To administer the Council and the Property on behalf of and for the benefit of all Co-owners.

C. Qualification. Only an individual who is a Co-owner, or who together with another person or other persons is a Co-owner, or who is an officer of a corporation, a general partner of a partnership, an associate of an association, a trustee of a trust, or a managing agent of any other legal entity which is a Co-owner, or which together with another person or other persons is a Co-owner, may be elected or continue to serve as a Director of the Council. The number of Directors provided at any one time by a Co-owner which is an organization or which consists of more than one individual shall not exceed the number of Apartments owned by such Co-owner.

D. Election and Term. Subject to the provision of Article II-A, above, the initial Board of Directors shall be elected at the organizational meeting of the Council and shall serve until the first annual meeting of the Co-owners. At each annual meeting of the Co-owners a new Board of Directors shall be elected to succeed the Directors whose terms expire at such meeting. Each Director shall be elected to serve until the next annual meeting of the Co-owners following his election. A director may be elected to succeed himself, and a Director shall be deemed to continue in office until his successor has been elected and has assumed office.

E. Removal. A director may be removed from office with or without cause by the affirmative vote of a Majority of the Co-owners.

F. Vacancies. Any vacancy in the Board of Directors caused by any reason shall be filled by a new Director elected by the affirmative vote of a Majority of the Co-owners.

G. Voting. Each Director shall have one (1) vote on all matters acted upon by the Board of Directors. The affirmative vote of a simple majority of

10 553 page 130

FD 593 page 130

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.

N. Quorum. Two (2) Directors shall constitute a quorum for the transaction of business.

I. Consents. Any action which 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.

J. Referendum. Any action taken by a vote of a Majority of the Co-owners shall be binding upon the Board of Directors and shall supersede any inconsistent action previously or thereafter taken by the Board of Directors, but no such action by the Co-owners shall impair the enforceability of any contract duly authorized or entered into by the Board of Directors pursuant to authority granted in the Horizontal Property Act, the Master Deed or these Bylaws.

K. Annual Meetings. An annual meeting of the Board of Directors shall be held during each fiscal year within ten (10) days following the annual meeting of the Co-owners. The time, date and place of the annual meeting of the Board of Directors shall be fixed at the annual meeting of the Co-owners by mutual consent of the Directors present at such meeting, and no further notice thereof shall be necessary. Any business which is appropriate for action of the Board of Directors may be transacted at a regular meeting.

L. Regular Meetings. Regular meetings of the Board of Directors shall be held at such times, dates and places as the Board of Directors may determine from time to time, but at least three (3) regular meetings shall be held each fiscal year. Any business which is appropriate for action of the Board of Directors may be transacted at a regular meeting.

M. Special Meetings. Special meetings of the Board of Directors may be called from time to time by the President of the Council and shall be called upon the written request of three (3) of the Directors. Only such business as is stated in the notice of meeting shall be transacted at a special meeting unless all Directors waive notice of any additional business.

N. Notice of Meetings. Written notice of every regular or special meeting of the Board of Directors stating the time, date and place of the meeting and, in the case of a special meeting, the business proposed to be transacted shall be given to every Director not fewer than three (3) 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 a Director who 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.

O. 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 meetings. Attendance at a meeting by a Director shall be deemed a waiver 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 thereat unless objection to lack of notice is raised before the business of which proper notice was not given is put to a vote.

P. Place of Meeting. All meetings of the Board of Directors shall be held upon the Property or at such other place convenient to the Directors as the President of the Council or the Board of Directors may direct. Meetings may be conducted by telephone if all Directors consent.

Q. Minutes of Meetings. The Secretary of the Council shall prepare, or cause to be prepared, and keep accurate minutes of every meeting of the Board of Directors. A copy of such minutes shall be distributed to each Co-owner within thirty (30) days following each meeting, and all such minutes shall be made available for examination and copying by any Co-owner at any reasonable time.

ED 593 PAGE 131

R. Compensation. The Directors shall serve without compensation but shall be entitled to reimbursement by the Council for expenses incurred in the conduct of their duties.

ARTICLE III

OFFICERS

A. Designation. The Council shall have a President, a Vice President, a Secretary and a Treasurer. The Council may also have one or more assistants to the Secretary and to the Treasurer and such other officers as may be necessary from time to time. The offices of the Secretary and the Treasurer may be filled by the same individual.

B. Qualifications. The President and the Vice President must be Directors, and all other officers must be individuals who are qualified to be Directors.

C. Election and Term. Officers of the Council shall be elected at each annual meeting of the Board of Directors and at such other times as may be required to fill vacancies of any office. All officers shall serve until their successors have been elected and assumed office unless sooner removed as hereinafter provided. No officer may be reelected to any number of terms.

D. Removal. Any officer may be removed from office at any time with or without cause by the Board of Directors or by the Co-owners. An officer removed by the Co-owners shall be replaced only by the Co-owners.

E. President. The President shall be the chief executive officer of the Council. He shall preside at all meetings of the Council and of the Board of Directors at which he is present. He shall have all of the general powers and duties which are usually vested in the office of the president of an unincorporated association, including but not limited to the power to appoint committees from among the Co-owners from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Council.

F. Vice President. The Vice President shall take the place and perform the duties of the President whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other Co-owner to take the place and perform the duties of the President on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors.

G. Secretary. The Secretary shall keep the minutes of all meetings of the Co-owners and of the Board of Directors, shall have charge of such books and papers as the Board of Directors may direct, and shall, in general, perform all the duties incident to the office of secretary of an incorporated association.

H. Treasurer. The Treasurer shall have custody of and responsibility for Council funds and securities and shall keep the financial records and books of account belonging to the Council. If a Manager is employed as hereinafter provided, custody of Council 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 of Directors so determine, but in such case the Treasurer shall verify the amounts of Council 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.

I. Compensation. The officers may receive such compensation as the Co-owners may determine and shall be entitled to reimbursement by the Council for expenses incurred in the conduct of their duties.

ARTICLE IV

MANAGER

A. Employment. The Board of Directors may employ a professional Manager to assist in or take charge of the administration of the Council and the Property.

B. Qualification. The Manager may be a corporation or other legal entity. No individual who is a Director or an officer of the Council or who resides in the home of a Director or an officer of the Council shall be the Manager or an officer, director, or agent of the manager.

C. Authority and Duties. The Manager shall have such authority and duties as may be determined by the Board of Directors and shall report to the Board of Directors or to the President, as the Board of Directors may determine.

D. Compensation. The Manager shall receive such compensation as the Board of Directors may determine.

ARTICLE V

FINANCES

A. Fiscal Year. The fiscal year of the Council shall be the calendar year unless the Co-owners shall otherwise determine.

B. Budget. The Board of Directors shall prepare, or cause to be prepared, and submit to the Co-owners at each annual meeting of the Co-owners a proposed budget for the Council for the fiscal year in which the meeting is held. The proposed budget shall set forth with particularity the anticipated Common Expenses for the fiscal year and the amount of money needed to establish reasonable reserves for the payment of future or unforeseen Common Expenses.

C. Approval of Budget. The proposed budget, as it may be amended upon motion of any Co-owner, shall be submitted to a vote of the Co-owners and when approved by the affirmative vote of a Majority of the Co-owners shall become the budget of the Council for the fiscal year (the "Budget"). The terms of the Budget shall be binding upon the Board of Directors until such terms are amended by action of the Co-owners.

D. Regular Assessments. The funds required by the Budget shall be collected from the Co-owners by the Board of Directors in equal monthly or quarterly assessments as the Board of Directors may determine.

E. 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 the Co-owners shall be collected from the Co-owners by the Board of Directors in such installments as the Co-owners shall determine.

F. Individual Assessments. Any payments to the Council which one or more, but fewer than all, of the Co-owners shall be obligated to make pursuant to the terms of the Horizontal Property Act, the Master Deed or these Bylaws shall be due upon demand and shall be collected by the Board of Directors.

G. Collection. Co-owners shall be liable for all assessments and shall pay the same promptly when due. The Board of Directors shall take prompt and appropriate action 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 Co-owner owing the same shall be required to pay all reasonable costs of collection, including attorney's fees. Assessments together with any and all late charges or penalties and costs of collection as provided herein, shall constitute a lien on the Apartments as provided in the Horizontal Property Act, these Bylaws and the Master Deed.

H. Penalty. An assessment not paid within ten (10) days following the date when due shall bear a penalty of five dollars (\$5.00) plus one percent (1%) of the assessment per month from the date when due. The penalty shall be added to and collected in the same manner as the assessment. For purposes of

this paragraph only, an unpaid assessment shall not be deemed overdue until the Board of Directors has delivered to the Co-owner owing the same a demand for payment, unless the Board of Directors has within thirty (30) days prior to the date when due delivered to such Co-owner a written notice of the amount and the date due, in which case no further demand shall be necessary. The Board of Directors may in its discretion waive all or any portion of a penalty or interest imposed pursuant to this paragraph if it affirmatively appears that the failure to pay the assessment when due was caused by circumstances beyond the control of the Co-owner.

I. Accounts. The Board of Directors shall maintain on behalf of the Council a checking account with a state or federally chartered bank having an office in the county where the Property is situated. The Board of Directors may also maintain on behalf of the Council an interest-bearing savings account with a state or federally chartered bank, savings and loan association or building and loan association. If a Manager is employed, said accounts may be maintained in the name of the Manager if the Board of Directors approves. All funds of the Council shall be promptly deposited in one of said accounts, except that the Board of Directors may maintain a petty cash fund of not more than fifty dollars (\$50.00) for payment for minor current expenses of the Council. The books and records relating to any account of the Council shall be made available for examination and copying by any Co-owner at any reasonable time.

J. Payments. The Board of Directors shall provide for payment of all debts of the Council from the funds collected from the Co-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 fifty dollars (\$50.00) shall be reviewed and approved by the President or the Board of Directors before payment is made. All checks and requests for withdrawals drawn upon any account of the Council shall be signed by the President and the Treasurer or by any two (2) alternate officers of the Council designated by the Board of Directors. If a Manager is employed, the Board of Directors may authorize the Manager to draw checks upon the account of the Council. The Board of Directors may also authorize the Manager to make disbursements from the petty cash fund, if any.

K. Bonding. The Board of Directors shall secure from a surety company rated "AAA" or better by Best's Insurance Reports a fidelity bond in an amount of not less than ten thousand Dollars (\$10,000.00) covering every individual authorized to withdraw funds from any checking or savings account maintained by the Council. The cost of the bond shall be a Common Expense.

ARTICLE VI

MAINTENANCE AND IMPROVEMENTS

A. Maintenance by Board of Directors. The Board of Directors shall provide for the maintenance, repair and replacement of the Common Elements and shall employ and dismiss the personnel required for such maintenance, repair and replacement.

B. Maintenance by Co-owners. Each Co-owner shall maintain his Apartment in good condition and repair.

C. Default by Co-owner. In the event that any Co-owner fails to perform the maintenance required of such Co-owner by these Bylaws or by any lawful Regulation enacted pursuant hereto 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 Co-owner or which substantially detracts from the value or appearance of the Property, the Board of Directors shall, after giving such Co-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 Co-owner by an individual assessment.

D. Expenses. Except as hereinafter provided, the expenses of all maintenance, repair and replacement provided by the Board of Directors shall be Common Expenses. The expenses of maintenance, repair or replacement which are necessitated by (i) the failure of a Co-owner to perform the maintenance required by these Bylaws or by any lawful regulation enacted pursuant hereto, (ii) the willful act, neglect or abuse of a Co-owner, or (iii) an uninsured

loss which is to be borne by a Co-owner in accordance with Article VII of these Bylaws shall be charged to such Co-owner by an individual assessment.

K. Improvements. The Board of Directors shall provide for the making of such improvements to the Common Elements as may be approved from time to time by the Co-owners. The cost of such improvements shall be Common Expenses; provided, however, that no Co-owner shall without his consent be assessed in any one year for the making of improvements to the Common Elements an amount in excess of one percent (1%) of the value of his Apartment as set forth in the Master Deed.

ARTICLE VII

RECONSTRUCTION

A. Decision of Co-owners. In the event of substantial damage to or destruction of any portion of the Property, the damage or destruction shall promptly be appraised by the Board of Directors. If more than two-thirds (2/3) of the Property has been destroyed, the Board of Directors shall promptly call a special meeting of the Co-owners to determine in the manner provided in the Master Deed whether the Property shall be reconstructed. In the event that the Co-owners determine not to reconstruct the Property, the Secretary shall execute a certificate to that effect and cause the same to be recorded in the same manner as these Bylaws; provided, however, that:

1. Any restoration or repair of the Property, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Master Deed and the original plans and specifications referenced in the Master Deed unless other action is approved by Mortgagees on Apartments which have at least fifty-one (51%) percent of the votes of Apartments subject to mortgages; and;
2. Any election to terminate the legal status of the project after substantial destruction or a substantial taking in condemnation of the Property must require the approval of Mortgagees of Apartments which have at least fifty-one (51%) percent of the votes of Apartments subject to mortgages.

B. Reconstruction. Unless the Co-owners affirmatively determine in the manner provided in the Master Deed not to reconstruct the Property following damage or destruction thereof, the Board of Directors shall promptly provide for such reconstruction. Such reconstruction shall encompass and include repair and replacement of all floor coverings, fixtures and appliances originally installed in the Apartment by the builder or equivalent replacements thereof installed by a subsequent Co-owner. If the cost of such reconstruction exceeds ten thousand dollars (\$10,000.00), the Board of Directors shall employ an architect licensed to practice in the jurisdiction or jurisdictions in which the Property is situated to supervise the reconstruction. It shall be the duty of such architect to inspect the progress of the reconstruction at regular intervals and to submit written authorizations to the Insurance Trustee hereinafter identified for the payment for work performed. When an architect is not required by the terms hereof, the Board of Directors may perform such inspections and submit such authorizations.

C. Costs. The Board of Directors shall employ for the purpose of reconstructing the Property the proceeds of any insurance obtained on the Property by the Board of Directors on behalf of the Council. If such insurance proceeds do not cover the cost of the reconstruction, the deficiency shall be borne by the Council as a Common Expense up to an amount equal to the sum of (i) the amount deducted pursuant to a "loss deductible" clause of the insurance policy plus (ii) fees and expenses of the Insurance Trustee hereinafter identified. Any deficiency in excess of such amount shall be borne by the Co-owners in proportion to their respective interests in the portion or portions of the Property reconstructed.

ARTICLE VIII

CONDEMNATION

A. Rights of Co-owners. If any portion of the Property is condemned by any authority having the power of eminent domain, each Co-owner and each Mortgagee shall be entitled to receive notice of such condemnation and to participate in the proceedings incident thereto unless otherwise prohibited by law. Each Co-owner or mortgagee, as their interest may appear, shall be entitled to an individual award to be determined by the value of his interest in the portion or portions of the Property condemned.

B. Duties of the Council. In the event that any award is received by the Council on account of condemnation of any portion or portions of the Common Elements, the Board of Directors shall promptly pay such award to the Insurance Trustee hereinafter identified as trustee for the Co-owners to be disbursed in the same manner as if it were insurance proceeds. The Board of Directors shall promptly call a special meeting of the Co-owners to determine whether any condemned portion of the Common Elements shall be replaced. If the Co-owners determine 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

INSURANCE

A. Hazard Insurance. The Board of Directors shall insure the Property on behalf of the Council for the full replacement cost thereof against all hazards and risks normally covered by a standard "all-risk" policy, including fire and lightning, and the hazards and risks covered by "extended coverage" and by "special extended coverage" in the amount of the replacement cost of the Property without regard to depreciation. Such insurance shall cover only the Apartments and the Common Elements. No insurance of the contents of any Apartment (other than the fixtures originally installed therein during construction and being a part of such Apartment) or any improvements made to an Apartment by any Co-owner shall be provided by the Board of Directors. The hazard insurance obtained by the Board of Directors may provide that an amount not to exceed one thousand dollars (\$1,000.00) shall be deductible from any indemnity payable on account of a single loss; except that in the case of loss caused by wind or hail the deductible amount may not exceed one percent (1%) of the loss. Any such deductible portion shall be borne by the Council as a Common Expense regardless of the number of Co-owners directly affected by the loss.

B. Liability Insurance. The Board of Directors shall also obtain premises liability insurance on the Property providing for a single-limit indemnity of not less than one million dollars (\$1,000,000.00) and covering bodily and personal injury and property damage. The Board of Directors shall not be required, however, to obtain public liability insurance covering accidents occurring within an Apartment or off the Property. The Board of Directors shall cause medical payment coverage to be included within the policy of liability insurance with indemnity limits of five hundred dollars (\$500.00) per person and ten thousand dollars (\$10,000.00) for each accident.

C. General Provisions. All insurance obtained on the Property by the Board of Directors shall be written in the name of the Council, and the cost of such insurance shall be a Common Expense. All such insurance shall be obtained from a company or companies licensed to do business in the State of South Carolina and rated "AAA" or better by Best's Insurance Report. No such insurance shall be permitted to expire except upon resolution of the Co-owners to that effect. Certificates of all policies of hazard insurance obtained on the Property by the Board of Directors on behalf of the Council shall be delivered upon request to any Co-owner or any person holding a mortgage on an Apartment.

D. Hazard Policy Provisions. All policies of hazard insurance on the Property obtained by the Board of Directors on behalf of the Council shall provide as follows:

E D 593 PAGE 136

1. The indemnity payable on account of any damage to or destruction of the Property shall be payable to any persons holding liens on or security interest in any Apartment as their interests may appear;

2. The policy shall not be cancelled without thirty (30) days prior written notice to the Board of Directors and to every holder of a lien upon or security interest in any Apartment who is named in the policy or an endorsement thereto;

3. No Co-owner shall be prohibited from insuring his own Apartment for his own benefit;

4. No insurance obtained by a Co-owner on his own Apartment shall be brought into contribution with the insurance obtained by the Board of Directors;

5. No right of subrogation shall exist against any Co-owner or members of his household;

6. The insurer shall not be entitled to reconstruct in lieu of paying the indemnity in cash if the Co-owners determine in the manner provided in the Master Deed not to repair or restore the Property; and

7. The policy shall not be cancelled on account of the actions of one or more, but fewer than a Majority, of the Co-owners.

If a policy of insurance containing all of the foregoing provisions cannot be obtained at a reasonable cost, one or more of such provisions may be waived by unanimous resolution of the Board of Directors preceded by ten (10) days notice of every Co-owner or by resolution of the Co-owners.

Claims. The Board of Directors, on behalf of the Council, shall have exclusive authority to negotiate and settle on behalf of the Co-owners all claims arising under policies of hazard insurance obtained on the Property by the Board of Directors on behalf of the Council. In the event of damage to or destruction of any portion of the Property, the Board of Directors shall promptly file a claim for any indemnity due under any such policies. The Board of Directors shall simultaneously notify the holders of any liens upon or security interests in the Property who may be entitled to participate in such claim or the filing of the same.

Insurance Proceeds. The net proceeds received by the Board of Directors from any indemnity paid under a policy of hazard insurance obtained on the Property by the Board of Directors on behalf of the Council shall promptly be paid by the Board of Directors to an Insurance Trustee as Trustee for the Co-owners as hereinafter provided. The Insurance Trustee shall be a state or federally chartered bank selected by the Board of Directors and having trust powers and capital and surplus of five million dollars (\$5,000,000.00) or more. The Insurance Trustee shall hold the insurance proceeds in trust and disburse said proceeds, after deduction of all reasonable fees and expenses of the Insurance Trustee, as follows:

1. If the Co-owners determine in the manner provided in the Master Deed not to reconstruct the Property, the Insurance Trustee shall distribute the insurance proceeds among all the Co-owners and their mortgagees or their interest may appear in proportion to their respective interests in the portion or portions of the Property damaged or destroyed.

2. If the Board of Directors is required to provide for the reconstruction of the Property, the Insurance Trustee shall disburse the insurance proceeds to the person or persons employed by the Board of Directors to effect such reconstruction in accordance with the written authorizations submitted to the Insurance Trustee by the architect supervising the reconstruction or by the Board of Directors. Any portion of the insurance proceeds remaining after all the costs of reconstructing the Property have been paid shall be disbursed to the Co-owners in proportion to their interest in the portion or portions of the Property reconstructed.

EO 593 PAGE 137

EO 593 PAGE 137

In making disbursements of the insurance proceeds, the Insurance Trustee shall be entitled to rely without further inquiry upon the written authorizations submitted as provided above or upon any written certification of facts submitted to the Insurance Trustee by the Board of Directors as hereinafter provided. The Insurance Trustee shall in no event be responsible for obtaining insurance on the Property, paying the premiums on any such insurance or filing claims for any payments due under any such insurance.

Of Insurance by Co-owners. Each Co-owner shall be responsible for obtaining such amounts of the following types of insurance as he deems necessary or desirable:

1. Hazard insurance on his Apartment for his own benefit;
2. Hazard insurance on the contents of his Apartment and on improvements made to his Apartment; and
3. Liability insurance covering accidents occurring within his Apartment.

Any Co-owner who obtains hazard insurance on his Apartment for his own benefit shall within thirty (30) days of obtaining the same deliver to the Board of Directors a certificate evidencing such policy of insurance.

ARTICLE X

NOTICE AND CONSENT OF CERTAIN MORTGAGEES REQUIRED

A. Notice of Action: In addition to any other notice provisions contained in these Bylaws, in the Master Deed or elsewhere, and not in lieu thereof, upon written request to the Council of Co-owners, identifying the name and address of the holder, insurer or guarantor and the Apartment Unit number, any mortgage holder or insurer or guarantor will be entitled to timely written notice of:

1. Any condemnation loss or any casualty loss which affects a material portion of the Property or any Apartment Unit on which there is a first mortgage held, insured, or guaranteed by the requesting mortgage holder or insurer or guarantor, as applicable;
2. Any delinquency in the payment of assessments or charges owed by an owner of an Apartment Unit subject to a first mortgage held, insured or guaranteed by such holder or insurer or guarantor, which remains unpaid for a period of sixty (60) days;
3. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Council of Co-owners;
4. Any proposed action which would require the consent of a specified percentage of mortgage holders as specified in Article X B, below;
5. Any election not to reconstruct the Property after substantial damage by fire or other casualty or any election to terminate, reorganize or merge the Regime.

B. Consent of Mortgagees: Except as provided in Article V of the Master Deed, but in addition to any other similar provisions contained herein, the consent of the Owners of Apartment units to which at least sixty-seven percent (67%) of the votes in the Council of Co-owners are allocated and the approval of holders of mortgages on Apartment Units which have at least fifty-one percent (51%) of the votes of Apartment Units subject to mortgages, shall be required to add or amend any material provisions of these Bylaws, the Master Deed or other Regime documents of the Property which establish, provide for, govern or regulate any of the following:

1. Voting;
2. Assessments, assessment liens or subordination of such liens;

3. Reserves for maintenance, repair and replacement of the common areas;
4. Insurance or Fidelity Bonds;
5. Rights to use of the common areas;
6. Responsibility for maintenance and repair of the several portions of the project;
7. Expansion or contraction of the project or the addition, annexation or withdrawal of property to or from the project;
8. Boundaries of any Apartment;
9. The interests in the Common Areas;
10. Convertibility of Apartment Units into Common Areas or Common Areas into Apartment Units;
11. Leasing of Apartment Units;
12. Imposition of any right of first refusal or similar restriction on the right of an Apartment Unit owner to sell, transfer, or otherwise convey his Apartment; and
13. Any provisions which are for the express benefit of mortgage holders, or insurers or guarantors of first mortgages on Apartment Units.

C. Presumption of Consent: Any mortgagee who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

ARTICLE XI

RESTRICTIONS AND REGULATIONS

A. Restrictions. The use of the Property shall be subject to the following restrictions:

1. Apartments in Phase I shall be used only as residences.
2. No Co-owner shall maintain or permit any nuisance within his Apartment or unreasonably interfere with the use and enjoyment of the Property by any other person entitled to the same by creating anywhere on the Property or permitting within his Apartment the creation of excessive noise, smoke or offensive odors. No person shall maintain on the Property, and no Co-owner shall permit within his Apartment, any condition which is unreasonably hazardous to the life, health or property of any other person.
3. No person shall make any additions to or perform any work upon the Common Elements or otherwise alter the Common Elements without the express authorization of the Board of Directors. No Co-owner shall alter or permit the alteration of the external appearance of any portion of his Apartment without the express approval of the Board of Directors.

B. Regulations. The Board of Directors shall adopt and amend from time to time such reasonable regulations ("Regulations") governing the operation and use of the Property as they may deem necessary or desirable. It shall not be necessary to record Regulations newly adopted or the amendment or repeal of existing Regulations, but no Co-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 such Co-owner.

C. Enforcement. The Board of Directors shall enforce the terms of the Horizontal Property Act, the Master Deed and these Bylaws and the Regulations promulgated pursuant hereto and shall take prompt and appropriate action to

correct any violations of the same. In addition to any other remedy to which the Council or any Co-owner may be entitled, the Board of Directors may impose against a Co-owner reasonable fines not to exceed a total of ten dollars (\$10.00) per day for any violation of the terms of the Horizontal Property Act, Master Deed or these Bylaws or of the Regulations promulgated pursuant hereto. Such fines shall be collected by individual assessment. Each day during which a violation occurs or continues may be deemed a separate offense.

D. Responsibility of Co-Owners. Each Co-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 Co-owner shall not relieve any member of his household or any of his tenants, agents or guests for any liability to the Council or to a Co-owner for their own acts.

ARTICLE XII

LIABILITIES AND INDEMNIFICATION

A. Liability of Council. No Co-owner shall be liable upon a debt or tort of the Council for any amount in excess of such portion of the liability of the Council which bears the same ratio to the total liability as to percentage of interest of such Co-owner in the Common Elements bears to the whole. All correspondence of the Council and all contracts executed by the Council shall incorporate the following recital:

The Middleborough Council of Co-owners is an unincorporated association established pursuant to the Horizontal Property Act of South Carolina. No member of the Council shall be liable upon a debt of the Council for an amount in excess of such portion of the debt which bears the same ratio to the total debt as the number of votes in the Council which the member is entitled to cast bears to the total number of votes which all members of the Council are entitled to cast.

B. Indemnification Among Co-owners. Each Co-owner shall be entitled to contribution from and indemnification by every other Co-owner to the extent that such Co-owner discharges or is required to discharge any portion of any liability of the Council in excess of such Co-owner's proportionate share thereof, except that no Co-owner shall be required to provide contribution or indemnification on account of a debt which was due and payable prior to the time such Co-owner became a Co-owner.

C. Liability of Directors and Officers. No Director or officer of the Council shall be liable to any Co-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 Horizontal Property Act, the Master Deed or these Bylaws.

D. Indemnification of Directors and Officers. The Council shall indemnify and defend each Director and each officer of the Council from any liability claimed or imposed against him by reason of his position or actions as a Director or an officer of the Council if all of the following conditions are satisfied:

1. Such Director or officer is not required to bear such liability by the terms of the Horizontal Property Act, the Master Deed or these Bylaws;
2. Such Director or officer gives the Council adequate notice of the claim or imposition of liability to permit the Council reasonable opportunity to defend against the same; and
3. Such Director or officer cooperates with the Council in defending against the liability.

The expense of indemnifying a Director or an officer shall be a Common Expense and shall be borne by all the Co-owners, including such Director or officer, in accordance with their percentage of ownership.

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ARTICLE XIII

ATTESTATIONS AND CERTIFICATIONS

A. Attestation of Documents. The presence of the signature of the Secretary or an assistant secretary of the Council on any contract, conveyance or any other document executed on behalf of the Council by another officer of the Council shall attest:

1. That the officer of the Council 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 Council and that the signature of such officer subscribed to the document is genuine; and

2. That the execution of the document on behalf of the Council has been duly authorized.

B. Certification of Documents. When any document relating to the Property or the Council is certified as authentic by the Secretary or an assistant secretary of the Council, a third party without knowledge or reason to know to the contrary may rely on such document as being what it purports to be.

C. Certification of Actions and Facts. When a written statement setting forth (i) actions taken by the Co-owners or by the Board of Directors or (ii) facts relating to the Property or the Council as determined by the Board of Directors is executed by the Secretary or an assistant secretary of the Council, a third party without knowledge or reason to know to the contrary may rely on such statement as factually true and correct.

ARTICLE XIV

AMENDMENTS

A. Procedure. These Bylaws may be amended from time to time by resolution adopted by the affirmative vote of Co-owners entitled to cast a total of no fewer than seventy-five (75) votes. No amendment shall be effective unless and until recorded as an amendment to the Master Deed as required by the Horizontal Property Act.

B. Effect. All Co-owners, tenants of Co-owners, employees of Co-owners and tenants, and any other persons that may in any manner use the Property or any part thereof shall be bound to abide by any amendment to these Bylaws duly adopted and recorded as specified herein.

ARTICLE XV

MISCELLANEOUS

A. Record of Ownership. Any person who acquires title to an Apartment except a person who acquires title to an Apartment merely as security for a debt, shall promptly inform the Board of Directors of the identity of such person and the date upon and manner in which title to the Apartment was acquired. The Board of Directors shall maintain a record of the names of all Co-owners and of the dates upon which they acquired title to their Apartments.

B. Notices. Any notices or documents placed in the mail receptacle or affixed to the front door of an Apartment by or at the direction of the Board of Directors shall be deemed delivered to the Co-owner of such Apartment, unless the Co-owner of such Apartment has previously specified to the Board of Directors in writing another address for delivery of such notices and documents. Any notice or document addressed to the Board of Directors and delivered by any Director by or at the direction of a Co-owner shall be deemed delivered to the Board of Directors.

C. 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.

D. Conflicts. In the event of any conflict between these Bylaws and the Horizontal Property Act or the Master Deed, the Horizontal Property Act or the Master Deed shall control, as appropriate. In the event of a conflict between these Bylaws and the Regulations promulgated pursuant hereto, these Bylaws shall control.

E. 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.

F. 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.

G. 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.

ED 593, page 142



Middleborough

1825 Julian Place, Columbia, South Carolina 29204
803-708-4890 Telephone 803-223-9468 Fax
middleborough@intermarkmgmt.com

July 14, 2016

Mr. Kevin O'Hara
Unit 2J
1825 St. Julian Place
Columbia, South Carolina 29204

RE: Unit 2J

Dear Mr. O'Hara:

It has been reported to the board that you have been using your unit as a hotel by letting it out on a daily or weekend basis. Please be informed that by doing so you are in violation of the Middleborough Condominium by-laws, which in pertinent part, state as follows: Art.XI A (1) " Apartments in Phase 1 shall be used only as residences." Accordingly, we ask that you immediately cease and desist from this commercial activity.

Regards,

A handwritten signature in black ink, appearing to read "Lesesne Monteith".

Lesesne Monteith, President
Middleborough Board of Directors



BRUNER, POWELL, WALL & MULLINS, LLC

JAMES L. BRUNER, P.A.*
WARREN C. POWELL, JR., P.A.**
HENRY P. WALL
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* Of Counsel
** Also Admitted in District of Columbia

ATTORNEYS AND COUNSELORS AT LAW
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BRYAN M.J. TRIPLETT

AUTHOR'S E-MAIL: WPEEL@BRUNERPOWELL.COM

August 29, 2016

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. J Lesesne Montieth, President
Middleborough Horizontal Property Regime
1825 Julian Place
Columbia, South Carolina 29204

Re: Middleborough Unit 2j
Our Client: Mr. Kevin O'Hara
Our File No.: 5-2811.100

Dear Mr. Montieth:

I represent Mr. Kevin O'Hara in regards to the Middleborough Horizontal Property Regime's attempts to illegally interfere with Mr. O'Hara's exclusive ownership and possession of his Apartment. I have reviewed your correspondence with Mr. O'Hara insisting that he "stop renting out your unit as a hotel room on a nightly or bi-nightly basis," and the Board's threat to seek a "cease and desist order from a 5th Circuit judge." The Board has no authority to make these demands and threats either through the Master Deed, the By-Laws, the law of the State of South Carolina, or the ordinances of the City of Columbia. As for your threat to seek an injunction, you will do so at your own risk.

I understand that the Regime Board is claiming that there is some minimum lease term for which Mr. O'Hara can lease his apartment and that the regime has the authority to set that limit. I believe that you have stated that the By-Laws "clearly" prohibit short term leases. I have found nothing in the By-laws or Master Deed that indicate that there are minimum rental terms imposed upon the units. In fact, for quite some time, multiple units in Middleborough have rented for less than annual or six-month leases with the knowledge of the board.

It appears that you are under the misguided opinion that the restriction in Article XI.A.1 that states that "Apartments in Phase I shall be used only as residences," somehow imposes some duration restriction on rental of units. Courts across the country have addressed this issue and the vast majority of those courts have found that rental of condo units for short terms was a "residential" use and that the restriction related to the character of the use and not its duration. Most all of the courts state that where the Master Deed or By-Laws of an HOA do not

specifically address minimum duration of leases, those HOAs cannot restrict the rights of the unit owners.

The Supreme Court of South Carolina has addressed short-term rentals and whether they were a residential use of a property. In Landing Dev. Corp. v. Myrtle Beach, 329 S.E.2d 423 (1985), the court found that short-term rentals did not violate the City's zoning ordinance because these rentals were still a "residential use." In this case, Myrtle Beach tried to deny business licenses on the grounds that short-term leasing was "motel-like" and the zoning district the condos were in was a multi-family "residential" district. Because the ordinance did not adopt any minimum duration of tenancy, the court found that Myrtle Beach could not restrict the rental of these units. The court's reasoning regarding the zoning ordinance is very similar to decisions across the country where an overzealous HOA has attempted to restrict one of its owner's rights to rent a unit short-term, based upon a "residential use" restriction.

All of that aside, there is really no argument that board can make to restrict the legal rental of Mr. O'Hara's unit. Under the Master Deed, Mr. O'Hara is entitled to the "exclusive ownership and possession" of his Apartment. This language mirrors the South Carolina Horizontal Act Section 27-31-60, which states that apartment owners "shall have the exclusive ownership of his apartment." Additionally, under Section 27-31-100, the act states that any restrictions on the legal use of the Apartment must be set forth in the Master Deed.

The master deed or lease shall express the following particulars:

- (f) A description of the full legal rights and obligations, both currently existing and which may occur, of the apartment owner, the co-owners, and the person establishing the regime. and
- (h) Any restrictions or limitations on the lease of a unit including, but not limited to, the amount and term of the lease.**

Because the Master Deed does not contain any limitations on the terms of the lease, the Board has no right to take any such actions. Additionally, you have no support at law or in the Master Deed or By-laws for the arbitrary restrictions that you have attempted to place in the regime Rules regarding tenant incomes and deposits. It is not your business to whom Mr. O'Hara chooses to lease the Apartment. I would also point out that it takes one hundred percent of the unit owners to change the Master Deed. Again, the decisions of courts around the country state that where the Apartment in an HOA is being used for an otherwise legal purpose, the regime cannot place restrictions on its use unless such restrictions were set forth in the Master Deed.

Please be advised, if you take any further actions that interfere with Mr. O'Hara's rights of full possession and enjoyment of this unit, we will seek damages for any resulting lost income from the regime. If Mr. O'Hara's tenants are harassed or otherwise bothered during their time in

Mr. J Lesesné Montieth, President
Page 3 of 3
August 29, 2016

his unit, we will hold the regime responsible and to the extent Mr. O'Hara suffers a loss, we will seek reimbursement for the same.

With that being said, Mr. O'Hara does not wish to engage in constant skirmishes with the board. Therefore, we propose that we meet to try and address specific concerns of the board and unit owners and see if there are any measures that Mr. O'Hara can take to answer questions or alleviate your anxieties.

I look forward to hearing from you soon.

Sincerely,



Wesley D. Peel

WDP/rdd

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE.

CERTIFIED MAIL



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Certified Mail Fee \$ 3.30		Postmark Here
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Street Middleborough Horizontal Property Regime		
City, State 1825 Julian Place		
Columbia, South Carolina 29204		
PS Form		actions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Mr. J Lesesne Montieth, President
Middleborough Horizontal Property Regime
1825 Julian Place
Columbia, South Carolina 29204



9590 9403 0767 5196 1430 55

2. Article Number (Transfer from service label)
7015 1730 0002 2976 2170

PS Form 3811, April 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

- A. Signature
X ☐ Agent ☐ Addressee
- B. Received by (Printed Name) C. Date of Delivery
- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express [®] |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail TM |
| ☐ Certified Mail [®] | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation TM |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Registered Mail | |
| ☐ Registered Mail Restricted Delivery | |

Domestic Return Receipt

DWELL, WALL & MULLINS, LLC
A Professional Limited Liability Company
ATTORNEYS AND COUNSELORS AT LAW
1735 ST. JULIAN PLACE, SUITE 200
POST OFFICE BOX 61110
COLUMBIA, SOUTH CAROLINA 29260-1110



VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Mr. J Lesesne Montieth, President
Middleborough Horizontal Property Regime
1825 Julian Place
Columbia, South Carolina 29204

Middleborough

Horizontal Property Regime



Middleborough Horizontal Property Regime Rules and Regulations

Revised January 7th 2019

Book 2364-1281
201902117 01/10/2019 13:24:08 480
Fee: \$28.00 County Tax: \$0.00

Notice
State Tax: \$0.00

201902117 John T. Hopkins II

Richland County R.O.D.



Index

I.	SECURITY.....	2
II.	RESIDENT AND STAFF RELATIONSHIPS.....	3
III.	MANAGEMENT RESPONSIBILITIES	4
IV.	VEHICLES – REGISTRATION AND PARKING	4
V.	COMMON AREAS – GENERAL.....	6
VI.	COMMON AREAS - ELEVATOR, LOBBIES & RESIDENT HALLWAYS	6
VII.	COMMON AREAS - COMMUNITY ROOM	7
VIII.	COMMON AREAS - SWIMMING POOL	7
IX.	COMMON AREAS - EXERCISE ROOMS.....	8
X.	COMMON AREAS – GROUND LEVEL	8
XI.	COMMON AREAS - TENNIS COURTS	9
XII.	PETS	9
XIII.	REPAIRS AND RENOVATIONS	9
XIV.	NOISE AND ODORS	12
XV.	MOVING AND APPLIANCE DELIVERIES	12
XVI.	BUILDING APPEARANCE	13
XVII.	TRASH AND RECYCLING	14
XVIII.	GUESTS AND RENTERS.....	14
XIX.	COMMUNICATIONS POLICY	15
XX.	MISCELLANEOUS	15
XXI.	SHORT TERM RENTALS	17
XXII.	GARAGE SITE PLANS	18

Middleborough Property Regime – Rules and Regulations

The rules outlined in this booklet are in place to ensure the peaceful enjoyment, maintenance thereof, and security of Middleborough's residents. The rules apply to all co-owners, residents, and guests and will be enforced by the Middleborough Horizontal Property Regime, its Board of Directors, and its employees. Charges, fines or costs associated with any violation of these Rules will be treated as an assessment, as defined in the Bylaws, unless otherwise specified. Co-owners may request a variance for any Rule that may require special consideration for specific circumstances.

The Rules and Regulations for the Middleborough Horizontal Property Regime contained here in supersedes and replaces any previously published revision thereof.

From time to time the Middleborough Horizontal Property Regime Board may update these Rules and Regulations. Such updates will be approved by the Board at an open meeting and shall be binding and enforceable by the Regime.

A co-owner is a person who owns the condominium unit and pays the regime fees, assessments, and property taxes. A resident is a person who resides in the condominium. Residency is established by receiving mail at Middleborough under the unit number occupied and paying utility costs and other related expenses for the unit. A guest is a person whose mailing address is not that of any Middleborough unit and who is temporarily housed for any length of time in a co-owner's or resident's unit. A tenant is a person who is leasing any of the commercial spaces at Middleborough.

Middleborough Property Regime – Rules and Regulations

I. SECURITY

A. The security and quiet enjoyment of all co-owners/residents (hereto known as residents) is a primary goal of Middleborough management. Every resident should be courteous to their neighbors and considerate of their rights and expectations while living at Middleborough.

B. Middleborough is a "Crime Watch" area and residents should report immediately any suspicious behavior or activity in or outside the building to the security officer or management.

C. All entrances to the building will be secured at 9:00 p.m. each evening until 7:00 a.m. the following morning. Residents have access to the building at all times; unaccompanied guests and all workers must *sign in* prior to being allowed into residential areas of the building.

D. Deliveries may be made to residential areas of the building provided that the resident has notified the security officer on duty that a delivery is expected, or the security officer is able to confirm by phone that the resident is home to take the delivery. The delivery agent must sign in and present a photo ID to the security officer on duty before being allowed to board an elevator.

E. Contractors *bringing equipment into the building must enter and leave the building using the ground floor loading entrance*. Contractors will not be allowed into the residential areas of the building without specific permission /authorization of the resident in whose unit work is being done. All contractors are required to sign in; *further, they must present a photo ID to the security officer on duty if asked*.

F. Any activity prohibited by law is strictly forbidden on Middleborough property and should be reported immediately.

G. Customers and clients of commercial businesses of Middleborough are not permitted in the residential areas of the building. Further, those customers and clients may not use the pool or the pool deck.

H. Key fobs are used to control access to locked areas that residents have the right to enter. Fobs may be purchased at the management office.

I. Key fobs are registered to the current holder, and conveyance after a unit sale or change of leaser should be communicated to the management office so that they fob will be registered with the new resident. Failure to communicate may result in the fob being deactivated without warning.

Middleborough Property Regime – Rules and Regulations

J. Key fobs not used at least once every 6 months will be automatically deactivated. Fobs can be reactivated by residents by visiting the management office.

II. RESIDENT AND STAFF RELATIONSHIPS

A. The staff of Middleborough, including the site manager, the security officers and maintenance personnel, are all employed under contracts with the Middleborough Horizontal Property Regime. They are hired to perform specific duties and functions as outlined in their respective contracts. Residents are asked to treat the staff with respect and common courtesy. A professional, business-like work environment is expected. The US Department of Labor laws governing appropriate work environments will apply. Residents violating the labor law will receive a written warning letter at a first offense, with subsequent violations being referred to the regime attorney.

B. The site manager is responsible for the day-to-day management of the facility and their time is extremely valuable given the issues to be dealt with on a daily basis. A professional decorum must be maintained between the site manager and the residents. Chatty discussions should be avoided. If a resident has a question or problem that needs to be addressed by management, this should be communicated concisely.

C. The security officers are on site to provide limited assistance to the residents of Middleborough and to ensure the building is under watch twenty-four hours a day. Security officers have a serious responsibility for the security and safety of residents of Middleborough. These officers are not expected or required to provide personal services for residents.

D. Maintenance personnel have specific duties to perform in the building and are not to be directed by residents to perform any service or repairs except in an emergency. Maintenance personnel are instructed to perform those duties as directed by the Site Manager or Officer of the Regime.

E. Management employs a maintenance engineer to service the physical plant. In-unit service will be provided for emergency repairs that, if not done, would impact abutting units. Residents are billed for such in-unit emergency services. A resident needing any emergency service gives tacit approval for admittance to their unit.

Middleborough Property Regime – Rules and Regulations

III. MANAGEMENT RESPONSIBILITIES

- A. The Board of Directors hires a management company to assist with the day-to-day operation of Middleborough and to advise the Board on various issues. *Residents should communicate directly with the site manager to report leaks, rules violations, and issues that affect the common elements such as housekeeping, grounds maintenance, and building maintenance.* If the management office is closed, and the issue poses a danger to property or an individual, the security officer on duty should be notified.
- B. Issues that need to be addressed to the Middleborough Board of Directors should be communicated in writing to the Board president via the management office using either a hard copy letter or email.
- C. The management company is expected to carry out the policies set by the Board. If a resident disagrees with a policy, the resident should bring the issue to the attention of the Board at an open Board meeting or submit a letter to the Board via the management office.
- D. Resident to resident disputes should be handled between the parties involved. Management is not required or encouraged to get involved in any such dispute residents are having with their neighbors.

IV. VEHICLES – REGISTRATION AND PARKING

- A. Residents must register their vehicles (including mopeds, motorcycles, boats, trailers, and RV's) with the site manager within five (5) days of moving in. A numbered sticker will be issued and must be placed on the vehicle in the location designated on the sticker application directions. Should the resident change vehicles or license plates, a new sticker is required. If a resident moves, the Middleborough registration is no longer valid.
- B. Residents are assigned one parking space per unit according to site plan at the end of this document.
- C. Gate remotes used to gain entrance to the garage's first level and the reserved parking spaces may be purchased at the management office.
- D. Vehicle registration forms are available at the management office.

Middleborough Property Regime – Rules and Regulations

- E. The parking area located on the south side of the building is reserved for handicapped parking as indicated by the striping and signage. No parking is allowed in handicapped parking spaces without a valid current handicapped parking permit. Violators' cars will be towed without notice and at the owner's expense. Violators are subject to a \$500 fine from the city as well.
- F. Stopping immediately adjacent to and in front of the south entrance is not allowed except for loading and unloading passengers. Drivers must remain in the vehicle in this area. This road is designated as a fire lane to accommodate emergency vehicles. Cars parked there may be towed without notice.
- G. The area located at the north end of the building is the service entrance and is designated exclusively for loading and unloading. There is a thirty (30) minute parking limit in this lot. The lot is to be used solely for deliveries and for moving into and out of the building. Residents needing more time than 30 minutes to load or unload their vehicle must get authorization from the security officer to exceed the parking limit. Towing in this lot is enforced if a resident blocks the dumpsters, recycling bins, or exceeds the 30-minute parking limit.
- H. Guest and resident parking is provided in the west lot above the swimming pool. Residents must notify management if any long-term guests will need parking. It is the responsibility of the resident to inform their guests of the parking regulations.
- I. The east lot is designated for commercial vehicles and the commercial tenants on the ground and first floors. Residents choosing to park in this lot do so at their own risk, as towing may be enforced at any time by the commercial tenants.
- J. Head-in parking is recommended for all vehicles using the outdoor parking lots, and is required for trucks, vans, and SUV's in order to keep sidewalks clear and lawn areas free for groundskeeping.
- K. Residents must register the vehicles of their long-term (one-month or longer) guests with the management office.
- L. Parking lots are not to be used for any purpose other than parking.
- M. Motorcycles, mopeds, and bicycles are not allowed to be parked or be driven on sidewalks, grass, or delivery areas.
- N. Vehicles are not to be washed or serviced anywhere on the Middleborough premises.

Middleborough Property Regime – Rules and Regulations

O. Vehicles that are inoperable or chronically neglected (including but not limited to flat tires) and vehicles that do not have current valid registration may not be parked anywhere on Middleborough property. Such vehicles are subject to towing after the vehicle has been tagged by the security office for 24 hours.

P. Bicycles can be stowed on the first or second level of the garage in the racks provided.

V. COMMON AREAS – GENERAL

A. Residents and their guests must respect all common areas

B. Playing and/or loitering in the hallways, elevators, community rooms, and lobby is not permitted.

C. Individuals using any of the common areas must properly dispose of their trash and litter and replace any furnishings they have moved.

D. Shirts and shoes must be worn in common areas except at the pool and in the sauna rooms.

E. Sidewalks, entrances, elevators, hallways, tennis courts, pool decks and stairways must not be obstructed and must only be used for the purpose intended.

F. Commercial tenants and their customers, clients, and guests are expected to conduct their business in a quiet, professional manner and with respect and consideration for Middleborough residents at all times.

G. Any commercial vendor or client must be accompanied by a resident if they are in the reception area.

H. Smoking, including vaping, is prohibited in all common areas including the pool.

VI. COMMON AREAS - ELEVATOR, LOBBIES & RESIDENT HALLWAYS

A. Elevator areas and hallways must remain free of obstacles that could potentially block access to individual units or hinder emergency personnel and equipment.

B. Foyers on the residential floors may be decorated if the majority of the residents on the floor agree. The cost of decorating is the responsibility of the floor's residents. The Board and management are not responsible for regulating the decor in the hallway foyers.

Middleborough Property Regime – Rules and Regulations

- C. Doors to individual units must remain closed to avoid noise, smoking and cooking odors in the hallways.

VII. COMMON AREAS - COMMUNITY ROOM

- A. The community room is a shared facility. Residents may book the room for private functions once a month at no charge, provided they submit a \$50 deposit which will be returned if the room is left clean and the furniture properly positioned. Residents are responsible for any damage incurred during the time of their use. Residents should ask management or a security officer to verify the room is being left in acceptable condition.
- B. The community room has two sections which may be booked independently or together as a single unit. The Fire Marshal has rated the community room for a combined maximum of 35 people.
- C. The security officer will maintain a calendar to record all community room reservations and shall note the date, time, and purpose of the event, as well as the name and unit number of the resident making the reservation. All reservations must be made in person through the security office at least 24 hours prior to the event.
- D. The resident making the reservation must be in attendance at the function.
- E. The resident is responsible for cleaning the community room immediately following the end of the function.
- F. By making reservations, the resident agrees to: 1) repair or replace any damage or missing property of the Regime and 2) indemnify and hold harmless the Regime against any loss or injury in connection with the use of the community room.
- G. Residents may use the community room for personal activities such as reading, study, or small gatherings provided another resident has not booked the room for a function.

VIII. COMMON AREAS - SWIMMING POOL

- A. The swimming pool and adjacent areas are for the exclusive use of residents and their guests. Guests must be accompanied by a resident at all times. Residents and their guests must wear a pool pass which may be purchased at the management office.
- B. Residents may purchase up to 6 passes annually, with a per unit limit of 6 passes.
- C. There is no lifeguard on duty at the pool. All persons use the pool at their own risk.

Middleborough Property Regime – Rules and Regulations

D. Everyone using the pool must observe the rules posted on the signage in the pool area. Some specific rules include the following:

1. Glass containers are not permitted in the pool area.
2. Activities that pose a danger to anyone in the vicinity of the pool are prohibited. Such activities include running, pushing, and diving.
3. Loud or boisterous activity or music that may disturb others is not allowed.
4. Proper swimming attire must be worn in the pool area. Shirts and footwear should be worn entering and exiting the pool area. No resident or guest should enter the building after swimming wearing wet clothing.
5. All personal items such as floats, toys, and pool noodles must be removed from the pool area when the person who brought the items leaves.
6. The pool may not be reserved for private parties.
7. The Board has authorized the security officer on duty to monitor the pool as often as necessary for unauthorized users. People in the pool area will be asked to show their pool pass. If they do not have the proper pass, or if they are unaccompanied guests, they will be required to leave.
8. If a pool umbrella is used, the resident must ensure that it is closed before leaving the pool area.

IX. COMMON AREAS - EXERCISE ROOMS

- A. Exercise and sauna rooms are restricted to their respective genders and are located on the first floor at the north end of the building. The rooms are open 24 hours a day. Access is gained using the resident's key fob.
- B. Only residents and their guests may use the facilities.
- C. Exercise equipment will not be brought into or removed from the exercise rooms without prior approval of management. Residents should report broken or unusable equipment to the site manager.
- D. Building dress codes apply when entering and leaving the exercise rooms.

X. COMMON AREAS – GROUND LEVEL

- A. Grocery carts are provided for the convenience of the residents and should be returned to the ground level immediately after each use. Contractors shall not use the black "Middleborough" carts, they can use any other branded cart.

Middleborough Property Regime – Rules and Regulations

- B. Coin operated washer and dryers are available for resident's use. Debit and credit cards may also be used.
- C. Beverage and snack vending machines are located on the ground floor.

XI. COMMON AREAS - TENNIS COURTS

- A. The tennis court is not available at this time.

XII. PETS

- A. Presently, only cats are allowed as pets. Birds, dogs, and exotic pets are not allowed.
- B. All pets must be registered with management office. *Two pets are allowed per unit.*
- C. A waiver for more than two pets or for a pet currently not allowed under the current regulations may be requested. In granting waivers, the Board will consider the current pet population, the resident's past ability to care for a pet and other factors unique to the request.
- D. Pet owners must transport their pets in appropriate carriers when in the common areas of the building. Pets being taken for walks must be leashed and must enter and exit the building through the loading dock on the ground floor.
- E. Pet litter must be double bagged before depositing in the trash chute or must be carried to the dumpster. Residents depositing pet litter directly into the trash chute will be fined \$10 for each violation and may be billed for the cost of cleaning and disinfecting the chute. After two violations, the owner's pet privileges will be revoked.

XIII. REPAIRS AND RENOVATIONS

- A. Plans for renovations in a residential or commercial unit must be submitted to management for review and written approval of those plans must be obtained before work begins. Work will be inspected in the presence of the co-owner by management when the work is completed.

Middleborough Property Regime – Rules and Regulations

B. MIDDLEBOROUGH WAS CONSTRUCTED PRIOR TO ASBESTOS BEING PROHIBITED IN BUILDING MATERIALS. BECAUSE ASBESTOS MAY BECOME AN ISSUE IN RENOVATIONS (I.E., DISTURBANCE OF ANY WALL, CEILING OR FLOOR SURFACE), THE BOARD OF DIRECTORS HAS REQUIRED THAT CO-OWNERS WISHING TO RENOVATE THEIR UNITS OBTAIN AN ASBESTOS SURVEY TO ENSURE THAT ANY ABATEMENT THAT MAY BE REQUIRED IS ADDRESSED PRIOR TO THE START OF CONSTRUCTION.

C. All work, both repair and renovation, must be conducted in a responsible and workmanlike manner. Co-owners must use licensed contractors for any work requiring a permit or any work for which the State requires licensed contractors. A list of contractors and sub-contractors is available at the management office. Any contractors on this list have evidenced willingness to work at Middleborough; however, neither the Regime nor Management accepts any responsibility for the quality of their work or their business practices.

D. Obtaining permits for renovations is the responsibility of the co-owner. Management may notify the city of Columbia to schedule an inspection if the co-owner has not followed proper protocols. The co-owner is responsible for paying any fines and/or court costs associated with violations the inspector uncovers.

E. No repair, maintenance, or modification of the Common Elements is permitted without written approval of the Board.

F. All contractors are required to sign in and present a photo ID at the security desk before they are allowed to proceed to the residential units.

G. Work associated with renovation and repair is limited to the hours of 8:30 a.m. to 6:00 p.m., Monday through Saturday, unless Board approval has been obtained for extended work hours. No work is permitted on holidays*.

*Holidays are: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

H. Residents are responsible for damage to any common area caused by their contractor and shall pay for the cost of replacement or repairs made therein, including plumbing fixtures, drain pipes, line stoppages, overflows, carpet, elevators and the like.

Middleborough Property Regime – Rules and Regulations

- I. Contractor's supplies, tools, and equipment must be brought into the building through the service entrance and taken to the individual unit via the service elevator only. Contractor vehicles are not permitted to park at the service entrance except to load and unload tools and supplies. Residents are responsible for reminding their contractors that there is a 30-minute parking limit at the service entrance.
- J. Contractors must remove construction debris and discarded appliances from the premises. Under no circumstances should construction debris be placed in the dumpster. Residents must ensure that their contractor properly removes all materials and debris from the common areas prior to leaving Middleborough. If the contractor fails to remove the debris, the resident must clean up what is left by their contractor within two (2) hours of the contractor's departure.
- K. HVAC units that need to be replaced must be located inside the respective utility area/closets. Condensing unit installations are not permitted on the balcony areas (outside). Only qualified and licensed contractors should replace air conditioning systems. Obtaining permits governing such replacements is the responsibility of the co-owner. Regular maintenance of the unit's HVAC system, including small motor replacement, filter replacement, or thermostat modifications does not require approval or permitting.
- L. Washer/dryer installations in individual units are not allowed. All existing washer/dry installations may be allowed to remain provided they meet code requirements and the co-owner agrees to periodic inspections as needed by management.
- M. Penetration of structural walls (concrete walls) is not allowed without prior approval of management. Plans for this work must be reviewed and approved by a licensed and qualified structural engineer at the resident's expense prior to any work being done.
- N. No electrical or plumbing modifications may be made by a resident without prior approval of management. Only licensed, qualified electricians and plumbers will be hired for such work. Proper permits must be obtained from the City of Columbia and posted on the door or next to the door outside of the unit. Minor repairs, such as unstopping a drain-line, do not require approval. Any electrical or plumbing work that is located inside a wall must be permitted and inspected.
- O. The screening and/or glassing in of balcony areas must be approved by management prior to the modification.

Middleborough Property Regime – Rules and Regulations

XIV. NOISE AND ODORS

- A. Any work in an individual unit that creates a vibration or noise must be limited to the hours of 8:30 a.m. to 6:00 p.m., Monday through Saturday. Work on holidays* is prohibited.
- B. Residents should be mindful of normal sounds associated with their occupancy, such as TV and music volume and housekeeping sounds such as vacuuming before 8:30 a.m. and after 9:00 p.m.
- C. Limiting offensive odors, (e.g., cigarette and cigar smoke, toxic or dangerous fumes, and strong cooking smells) is the responsibility of every resident. If any resident, guest or contractor working in a unit causes any odor that may be dangerous to the health of another resident, the cost of any necessary remediation will be billed to the responsible party and the resident will be subject to a fine up to \$10.00 per day that the odor is present.
- D. Doors to individual units should remain closed to prevent noise and odors from migrating into the hallways.

XV. MOVING AND APPLIANCE DELIVERIES

- A. When moving large objects, the service elevator must be used, and the objects must be brought in through the service entrance. Grocery carts are available near the vending machines for residents who have multiple packages or large deliveries. The carts must be returned to the ground floor immediately after use.
- B. Residents who are moving in or moving out must schedule their move with the security officer at least 24 hours before the move is to occur. Moving hours are between 8:30 a.m. and 6:00 p.m., Monday through Saturday. Moving on Sunday and holidays* is allowed only with management's approval. No move in or out may begin later than 1:00 p.m.
- C. Residents are responsible for any damage incurred to the common elements while moving their possessions. Common elements include, but are not limited to, the elevator, walls, carpeting, ceiling tiles, and service entrance doors.

Middleborough Property Regime – Rules and Regulations

- D. A \$100.00 deposit is required when using the service elevator for moving in or moving out. The deposit may be in the form of cash or check when moving in but must be in cash when moving out. The deposit will be eligible for return to the resident if no damage to the elevator is found, and if a resident who is moving out has returned all fobs and garage remotes. The amount of the deposit will be reviewed from time to time by the Board and adjusted if warranted.
- E. Movers, contractors, and delivery personnel must share the service elevator with each other. No single agent may lock the elevator to reserve it exclusively.
- F. Residents requiring the use of a service area parking space for longer than 30 minutes are required to notify the security officer on duty to obtain permission. Vehicles impeding the smooth flow of deliveries will be towed without notice at the owner's expense.
- G. Multiple vehicles for the same move will not be permitted in the service lot if those vehicles impede normal traffic or they create an unsafe condition for residents.

XVI. BUILDING APPEARANCE

- A. Nothing (including but not limited to clothes, rugs, sheets, towels, and blankets) may not be hung from the balcony railing at any time.
- B. Only white or off-white manufactured or designed window treatments are permitted. All colored drapes must have a white or off-white lining.
- C. Temporary balcony enclosures such as shades and curtains must be adequately secured. Management will determine if any item that hangs at the balcony's edge poses a hazard and if so, will request removal of such an item.
- D. Nothing should be thrown from or swept off the balcony including plant debris, dust/dirt, and smoking materials.
- E. No signs or advertisements are allowed to be posted on the premises.
- F. All residents must exercise care in cleaning and maintaining their individual balcony areas. Plants must have saucers to retain water. Hanging items such as plants and bird feeders must be hung 3 feet from the railings. Windsocks designed to keep pigeons away are permitted, but banners are not allowed.
- G. Balconies are not to be used as storage areas for hazardous materials or items that would diminish the esthetic décor of the building. The resident will be responsible for accidents, destruction of property, or littering if items blow off their balconies.

Middleborough Property Regime – Rules and Regulations

- H. Only electric grills are allowed on the balconies.
- I. The management office will notify the resident of any violation, allowing five (5) business days to correct the problem. After five (5) business days, a fine of up to \$10.00 per day will be levied until corrective action is taken.

XVII. TRASH AND RECYCLING

- A. Trash must be bagged and secured in 13-gallon tall kitchen trash bags before being placed in the trash chute. Do not leave trash on the floor in the trash room or on the ground besides the dumpster or recycling bins.
- B. Trash may be deposited in the chute only between the hours of 7:00 a.m. and 9:00 p.m. daily.
- C. Boxes, breakable items including glass containers and bottles, and items too large or long to fit into proper trash bags must be carried to the dumpster or recycling bins located outside the service entrance.
- D. Boxes must be flattened and carried to the box recycling area next to the dumpsters. If boxes are not flattened, the city will not remove them from the premises.
- E. Cooking oils and grease should be collected in a disposable container and placed in the trash to avoid clogging kitchen drains.
- F. Drano and other products corrosive to pipes may not be used to unclog drains. Residents must call their own plumber to make repairs on their sinks, toilets, and drains.
- G. Residents may not leave furniture, mattresses or other large items they wish to discard in the loading dock area. Consult management for the proper procedure to have these items removed from your unit or arrange for private removal of the items to a dump/recycling site.

XVIII. GUESTS AND RENTERS

- A. Unaccompanied guests and all workers must *sign in* prior to being allowed into residential areas of the building each time they visit.
- B. If the security officer on duty has not been notified by a resident to allow guests to proceed to their unit, the security officer must call and speak with the resident when a guest arrives. Identification may be required of visitors. No visitor will be allowed to proceed to the residential floors without specific permission from the resident.

Middleborough Property Regime – Rules and Regulations

- C. Co-owners electing to rent their units must arrange for the transfer of unit keys, fobs, gate remotes, list of rental rules, and other rental accoutrements directly from the co-owner to the guest/renter. The security officer is not a hotel concierge and is prohibited from assisting renters by acting as an intermediary.
- D. All of the rules and regulations that are in effect for co-owners apply to guests and renters with regard to noise, odors, parking, and comportment.
- E. The use of the swimming pool is off limits for guests and renters who do not have a key fob registered in their name unless the co-owner is present in the pool area with the guest.
- F. All renters are prohibited from sub-letting their unit unless authorized by the co-owner.
- G. Accommodation rentals are prohibited, and residential units may only be used for residential purposes.

XIX. COMMUNICATIONS POLICY

- A. The management office uses an email hosting service to keep residents up-to-date on policy changes, amendments to the rules and regulations, emergency conditions in the building or on the property, and reminders of meetings. It is up to each resident to authorize the use of their email address in order to participate in this service. Authorization is given when the email address is included on the Directory Form each resident must fill out when moving into the building.
- B. Paper notices are posted on enclosed announcement boards outside the management office, at the mailboxes, and on the ground floor near the laundry room.
- C. Notice of the annual meeting and any special meetings will be mailed to the co-owner of record at the time of the mailing.

XX. MISCELLANEOUS

- A. Middleborough uses an exterminating company to treat on a quarterly basis the residential units, common areas, and commercial spaces in the building. The quarterly inspection and treatment are designed to prevent insect infestation. Residents must inform the management office if they wish to opt out of treatment, and if they wish to make alternate arrangements for a private company to treat their unit.

Middleborough Property Regime – Rules and Regulations

B. Any pest infestation should be reported to management as quickly as possible so that the appropriate steps may be taken to limit the spread of the problem.

C. Each resident must equip their unit with working smoke detectors as dictated by the Fire Marshall.

D. Insurance: The Regime's insurance does not cover the interior surfaces, the contents and improvements, or liability issues for individual units. Residents are responsible for obtaining a condominium unit owners policy (also known as an HO-6 policy) for their respective units. This policy should include adequate property, personal property and liability coverage as determined by the unit owner's insurance agent in accordance with Article IX, Section G of the Middleborough Bylaws which states:

Insurance by Co-owners. Each Co-owner shall be responsible for obtaining such amounts of the following types of insurance as he deems necessary or desirable:

- 1. Hazard insurance on his Apartment for his own benefit;**
- 2. Hazard insurance on the contents of his Apartment and on improvements made to his Apartment; and**
- 3. Liability insurance covering accidents occurring within his Apartment**

Any Co-owner who obtains hazard insurance on his Apartment for his benefit shall within thirty (30) day of obtaining the same deliver to the Board of Directors a certificate evidencing such policy of insurance.

E. The Regime further urges owners to include in any coverage a loss provision that is not covered by the Master Policy.

F. Special Note: Damage to any unit, including water, smoke, or odor, is the responsibility of the resident of the unit from which the problem originates. Any costs to repair damage caused by water, smoke, or odor must be paid by the resident of the unit where the source of the damage originates. For example, if a unit is damaged by water coming from another unit, the resident of the unit from which the problem originates is responsible for all the costs incurred to repair the damaged unit.

Middleborough Property Regime – Rules and Regulations

G. Packages accepted by the security officer on duty must be signed for when the resident picks up the package. Residents will be notified by phone of perishable deliveries so that they may pick up the package as quickly as possible after it is delivered. If a resident knows that a perishable delivery is expected, the resident should notify the security officer to be on the alert for the package.

H. Use of drones and other unmanned motorized aircraft is not allowed above the Middleborough HPR property or in close proximity of the building without prior written management consent. Violation of this rule will result in an assessment fine to the co-owner of the operator's residence.

I. The demand notice for the regime fee, also called the annual assessment, is made at the time the budget is approved by the co-owners at the annual meeting. Payment may be made annually, semi-annually, quarterly, or monthly. A separate demand letter is not required except for assessments that are in addition to the annual regime fee. The late fee and penalty structure associated with late payments is outlined in the Bylaws

J. Discharge of firearms, BB guns, air guns, and fireworks is not permitted on the premises.

XXI. SHORT TERM RENTALS

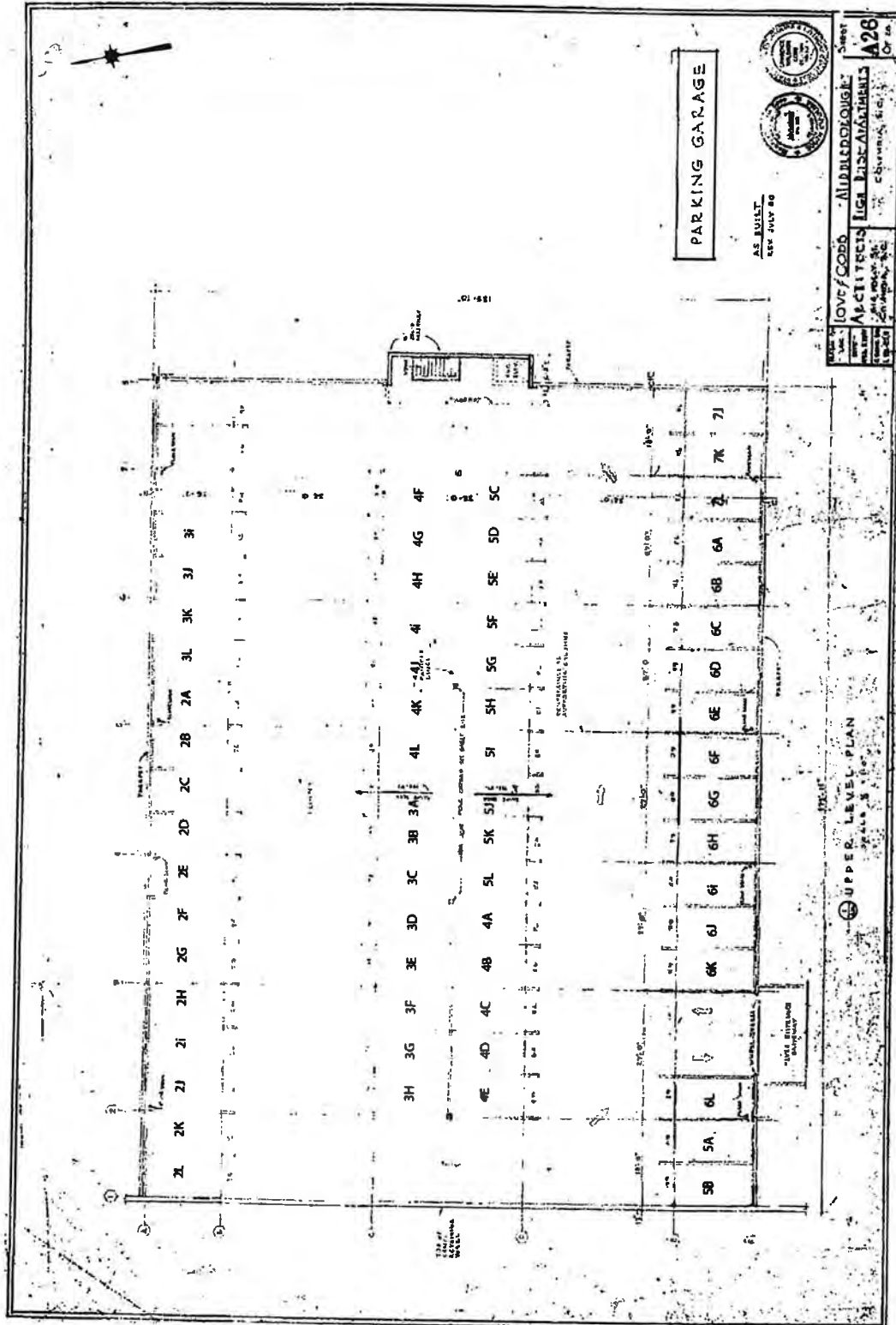
A. Pursuant to its authority granted by Article II of the Association Bylaws, the Board of Directors has concluded that the offering of rental of any (residential) unit for a term of less than thirty (30) days shall be deemed a non-residential use of the property and prohibited. For purposes of this resolution, "non-residential" shall be defined as the offering, advertising, using or renting of a unit as a lodging establishment for the purpose of collecting rent or remuneration for a period of thirty days or less. This prohibition specifically applies to AirBNBs, VRBOs or any similar service or advertising vehicle that markets rentals for less than thirty (30) days.

B. For each violation of this Regulation, a fine of \$10 per day as stipulated in the Bylaws shall be imposed.

Middleborough Property Regime – Rules and Regulations

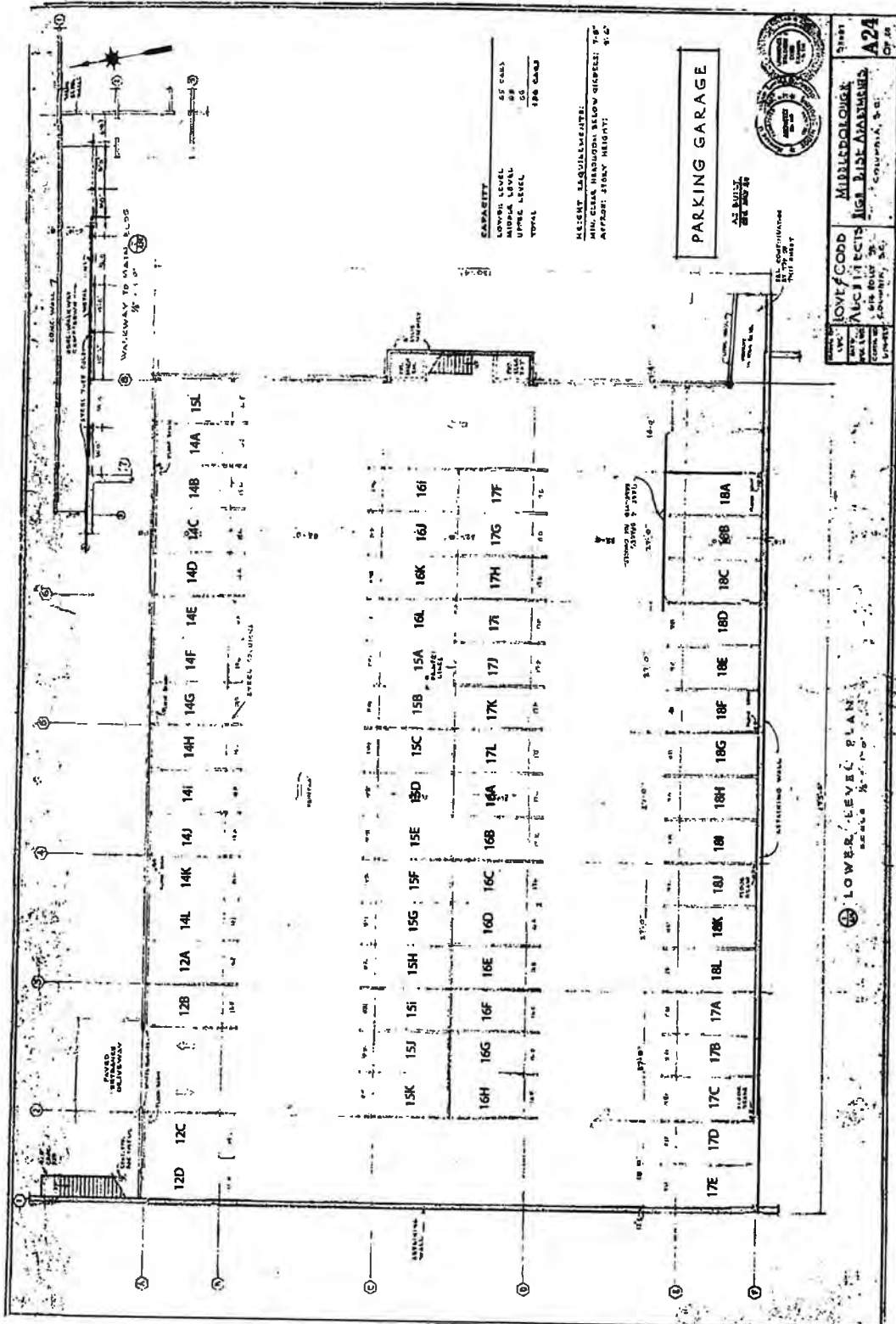
XXII. GARAGE SITE PLANS

A. Upper Level Plan



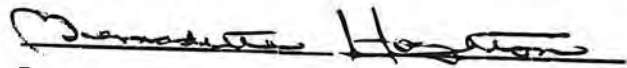
Middleborough Property Regime – Rules and Regulations

C. Lower Level Plan



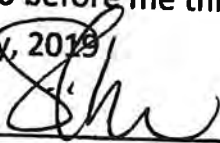
CERTIFICATION AS TO THE RULES AND REGULATIONS

The undersigned, as the duly elected President of the Middleborough Horizontal Property Regime, being duly sworn, hereby certifies that the document set out above constitutes a true and correct copy of the duly adopted Rules and Regulations of the Middleborough Horizontal Property Regime as they exist this 10th day of January, 2019.



Bernadette Houghton, President
Middleborough Horizontal Property Regime

SWORN to before me this 10th day
of January, 2019



Notary Public for South Carolina

My Commission Expires: 3/16/2019

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Kevin O'Hara, Rebekah H. O'Hara, and
Krebone Enterprises, LLC,

Plaintiff-Petitioners,

v.

Middleborough Horizontal Property Regime,

Defendant-Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
C/A No.: 2019-CP-40-01231

**DEFENDANT'S MOTION TO
ALTER OR AMEND JUDGMENT
PURSUANT TO RULE 59(e), SCRCP**

Pursuant to Rule 59(e), of the *South Carolina Rules of Civil Procedure*, Defendant Middleborough Horizontal Property Regime ("Middleborough") hereby moves to alter or amend this Court's judgment entered March 3, 2020, finding that Plaintiffs have the right to use their apartments for short-term rentals under Middleborough's Master Deed and By-Laws. The basis for this motion is that the Order fails to address, or has misconstrued, Middleborough's arguments as to the distinction between a provision restricting property to "residential purposes" and the provision in Middleborough's governing documents that apartments be "used *only* as *residences*" (emphasis added), the applicable definition of "residence," particularly the definition of "residence" at the time of execution of the covenants as required to be applied by South Carolina case law, and distinctions between case law cited in the Court's Order and the present case.

STANDARD

"A party may wish to file a S.C. R. Civ. P. 59(e) motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Elam*

v. SCDOT, 361 S.C. 9, 13, 602 S.E.2d 772, 774 (2004). “It is proper to view a S.C. R. Civ. P. 59(e) motion not only as a vehicle to request the trial court “alter or amend the judgment,” but also as a vehicle to seek “reconsideration” of issues and arguments.” *Id.*; see also *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992) (“The purpose of Rule 59(e), SCRCF, to alter or amend the judgment is to request the judge to reconsider matters properly encompassed in a decision on the merits.”).

DISCUSSION

I. Middleborough’s provision, “used only as a residence” is distinguishable from the Order’s cited cases regarding “residential purposes,” and the applicable definition of “residence” has not been applied.

At trial, Middleborough argued that Plaintiffs’ use of Unit 2J and intended use of Unit 14G as short term-rental properties is prohibited by Article XI, Section A(1) of Middleborough’s Bylaws, which provides, “Apartments in Phase I shall be used only as residences.” The Final Order in this case devotes the majority of its analysis to the question of whether a restrictive covenant limiting property to “residential use” or for “residential purposes” constitutes a prohibition on short-term rentals. This Court ultimately concluded that such a restriction does not prohibit short-term rentals because the term “residential purposes” generally “relates to the character of the use, not its term, and that short-term rentals are not precluded as inconsistent with residential uses.” Order pg. 11

In reaching this conclusion, the Order relies almost exclusively on cases that discuss short-term rentals in the context of restrictive covenants that require property be used for “residential purposes,” or zoning cases that discuss whether the use of the property constitutes a “residential” purpose as opposed to a “commercial” purpose. Order pg. 10-11. However, Middleborough does not argue that short-term rentals cannot ever be used for “residential” purposes, such as eating,

sleeping, or other activities generally associated with a personal dwelling. The crux of Middleborough's argument, and the one it is asking this Court to address, centers on the distinction between a provision restricting property to "residential purposes" and Middleborough's specific provision that apartments shall be "used *only* as *residences*" (emphasis added).

While neither term is defined in Middleborough's By-Laws or Master Deed, Middleborough has consistently maintained that the term "residential purposes," is less restrictive than a provision requiring apartments be "used only as residences." As the Court notes, the term "residential purposes" relates to "the character of its use, not its term." Order Pg. 11. In that regard, a property such as a hotel, business, or even an office building may arguably be used for "residential purposes" when a person uses the property for activities generally associated with a personal dwelling. A "residence," on the other hand, refers to the specific physical place where a person makes his or her home, coupled with an intent to reside there for an undetermined period. *See Black's Law Dictionary* (5th ed. 1979) (defining "residence" as "personal presence at some place of abode with no present intention of definite and early removal and with purpose to remain for undetermined period, not infrequently, but not necessarily combined with design to stay permanently"); *see also Black's Law Dictionary* 1543 (3d ed. 1933) ("The place where a man makes his home or where he dwells permanently for a considerable length of time."); *Merriam Webster's Collegiate Dictionary* 996 (10th ed. 1993) ("the place where one actually lives as distinguished from one's domicile or a place of temporary sojourn."). Therefore, although the manner in which Plaintiffs have used their apartments may arguably not always be inconsistent with a "residential purpose," it is certainly inconsistent with the common definitions of the term

“residence.”¹

The Court’s focus on a “residential purpose” restriction fails to address this distinction. While the Order states in passing that the “word ‘residence’ is one of multiple meanings,” it does not actually cite to or analyze any of those definitions. Order pg. 11. Under South Carolina case law, the language of a restrictive covenant is to be construed according to the “plain and ordinary meaning attributed to it *at the time of execution*.” *Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 863-64 (1998) (emphasis added). The definition of “residence” from just two years prior to the execution of Middleborough’s Master Deed and Bylaws was “personal presence at some place of abode with no present intention of definite and early removal and with the purpose to remain for undetermined period, not infrequently, but not necessarily combined with design to stay permanently. *Black’s Law Dictionary* (5th ed. 1979). *See also Berkeley Cty. Sch. Dist. v. S.C. Dep’t of Revenue*, 383 S.C. 334, 345, 679 S.E.2d 913, 919 (2009) (“Whe[n] a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning.”); *see also S.C. Pub. Int. Found. v. City of Columbia*, 431 S.C. 164, 168-69, 847 S.E.2d 257, 259 (Ct. App. 2020) (relying on *Black’s Law Dictionary* and *Merriam-Webster’s Collegiate Dictionary* to define the word “residence”); *Centex Int’l, Inc. v. S.C. Dep’t of Revenue*, 406 S.C. 132, 144, 750 S.E.2d 65, 71 (2013) (relying on *Black’s Law Dictionary* and *Merriam-Webster’s Collegiate Dictionary* to provide the meaning of a word not defined in the statute). When considered in the context of the dictionary definition at the time of the covenant’s execution, as required by South Carolina case law, the only reasonable interpretation of the provision that “Apartments in Phase I shall be used only as residences” would operate to preclude transient use of the property for short,

¹ Middleborough maintains that Plaintiffs’ specific use of their apartments does not satisfy even a “residential purpose” restriction, and urges the Court to reconsider its finding that Plaintiffs are not engaged in a commercial operation of offering public accommodations. Article I(C) the Master Deed describes Phase 1 as “residential apartments,” while amendments to the Master Deed have added a Phase 2 on the ground floor which allowed for commercial uses.

predetermined durations lasting as few as two nights by occupants who are unlikely to return or make the property their home. Plaintiffs' short-term rental of their units does not conform to this requirement.

II. In addition to the distinction between “residential purposes” and “used only as a residence,” the case law cited in the Order is readily distinguishable from the present case.

Notwithstanding the aforementioned distinction regarding “residential purposes” provisions and the actual provision at Middleborough, the case law cited in the Order is not analogous or applicable to the present case. *Landing Development Corp. v. City of Myrtle Beach*, 285 S.C. 216, 329 S.E.2d 423 (1985), cited in the Order, is a readily distinguishable zoning case rather than a case addressing restrictive covenants. The zoning ordinance addressed in *Landing Development Corp.* did not contain any provision that the properties be used “only as residences” or even for “residential purposes,” but rather concerned essentially the makeup of the buildings. In fact, the word “residence” is completely absent from the opinion. Moreover, the Court ruled against the ordinance in part because the City had previously enforced the ordinance in an entirely contrary manner. By contrast, in the present case, Middleborough’s provision is clearly denoted as a use restriction rather than a zoning/building restriction, and Middleborough’s provision actually requires that the properties be used only as residences.

The Order also discussed *Community Service Assocs v. Wall*, 421 S.C. 575, 808 S.E.2d 831 (Ct. App. 2017), which also concerned a “residential purposes” provision rather than the provision in the present case, but the Order also did not address the fact that *Wall* also concerned a house in which only a portion was rented while the house was simultaneously occupied by the homeowner, unlike the Plaintiffs in this action. More applicable cases to the present case are the recent cases *Hensley v. Gadd*, 560 S.W.3d 516 (Ky. 2018) and *Hoffman Revocable Trust v. Marshall*, 2020

WL 748180 (Ky. Ct. App. Feb. 14, 2020), *review denied* (May 20, 2020). In *Hensley*, the court relied on the very same aforementioned *Black's Legal Dictionary* definition from 1979 which was the definition at the time the Middleborough provision was executed, and found that that short-term rentals violated a “residential purposes” restriction. Then, in *Marshall*, the court addressed a provision that properties be used “as private summer residences” and found short-term rentals to be prohibited by that language. Likewise, in this case, Plaintiffs’ short-term rentals are prohibited by Middleborough’s restriction that they be used “only as residences.”

CONCLUSION

For the reasons set forth above, Middleborough requests that this Court (1) modify the Order to address the distinction between a provision restricting property to “residential purposes” and the provision in Middleborough’s governing documents that apartments be “used only as residences,” as well as the applicable definition of “residence,” and the distinctions in cited case law from the present case; and (2) reconsider its ruling and find that Middleborough’s By-Laws preclude Plaintiffs’ use of their apartments as short-term rental properties.

{Signature page to follow}

Respectfully submitted,

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March 15, 2021
Columbia, SC

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Sep 20 2021

SC Court of Appeals

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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September 20, 2021.