

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Cynthia Graham Howe, Master-In-Equity

Appellate Case No. 2018-001590

Andrew Waldo; Jane Zheng; and SC Coast Properties, LLC d/b/a Keller Williams
Realty.....Respondents,

v.

Michael Cousins; Founders Five, LLC d/b/a Sperry Van Ness Founders Group;
and South Carolina Association of REALTORS®Appellants.

APPENDIX TO THE RECORD ON APPEAL
With Amended Index

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SC Court of Appeals

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 16-CP-26-3338

Andrew Waldo; Jane Zheng; and)
SC Coast Properties, LLC d/b/a)
Keller Williams Realty,)

Appellants,)

vs.)

Michael Cousins; Founders Five,)
LLC d/b/a Sperry Van Ness)
Founders Group; and South Carolina)
Association of REALTORS,)

Respondents.)

**NOTICE OF MOTON AND MOTION
OF RESPONDENT MICHAEL COUSINS
TO CONFIRM ARBITRATION AWARD
AND ENTER JUDGMENT**

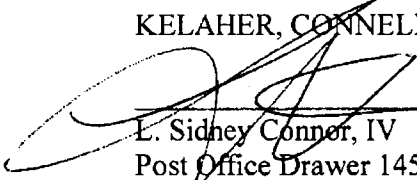
HORRY COUNTY
2016 JUN 30 PM 1:43
MICHAEL COUSINS-WARD
CLERK OF COURT

**TO: DOUGLAS M. ZAYICEK, ATTORNEY FOR ANDREW WALDO AND
MARCUS A. MANOS, ATTORNEY FOR SOUTH CAROLINA ASSOCIATION
OF REALTORS**

YOU WILL PLEASE TAKE NOTICE that on the tenth (10th) day after service hereof,
or as soon hereafter as counsel may be heard, counsel for the above-named Defendants Michael
Cousins and Founders Five LLC d/b/a Sperry Van Ness Founders Group will move before this
Court for an Order confirming the Arbitration Award of the South Carolina Association of
Realtors and entering judgment accordingly. The grounds for this motion are that this matter
was arbitrated before the South Carolina Association of Realtors and an award rendered in favor
of Michael Cousins against Andrew Waldo in the amount of \$250,000. All appeals have been
exhausted before the South Carolina Association of Realtors and the arbitration rules of the
South Carolina Association of Realtors allow the prevailing party to petition the Circuit Court for

confirmation of the award and entry of judgment. This motion is further supported by the attached Memorandum.

KELAHER, CONNELL & CONNOR, P.C.


L. Sidney Connor, IV
Post Office Drawer 14547
Surfside Beach, SC 29587
(843) 238-5648
sconnor@classactlaw.net
Attorney for Defendant/ Respondent Michael Cousins
Founders Five, LLC d/b/a Sperry Van Ness Founders Group

June 22, 2016

HOBBS COUNTY
2016 JUN 30 PM 1:43
MELANIE HODGSON
CLERK OF COURT

CERTIFICATE OF SERVICE
THE UNDERSIGNED HEREBY CERTIFIES THAT A TRUE COPY
OF THE FOREGOING PLEADING HAS BEEN SERVED UPON
OPPOSING COUNSEL BY MAILING A COPY PROPERLY
ADDRESSED WITH SUFFICIENT POSTAGE AFFIXED THERE TO

THIS 28th DAY OF June 2016


L. SIDNEY CONNOR IV

P.O. DRAWER 14547

SURFSIDE BEACH, SC 29587

ATTORNEYS FOR Def/Resp. Cousins

RULE 11 CERTIFICATION

The attorney(s) below hereby certifies that either:

A. He/She has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the motion; or

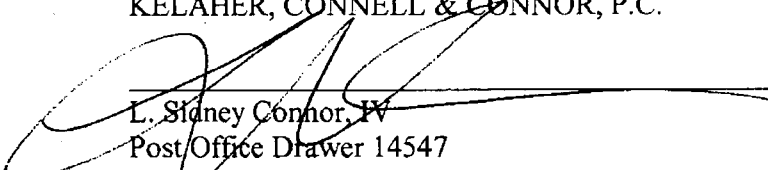
B. Such consultation would serve no useful purpose, or could not be timely held; or

C. Due to the nature of the motion, there is no duty to consult opposing counsel in that this is a motion:

- a. To Dismiss
- b. For Summary Judgment
- c. For New Trial
- d. For Judgment NOV

HORRY COUNTY
2016 JUN 30 PM 1:43
MELANIE HODGINS-VALENT
CLERK OF COURT

KELAHER, CONNELL & CONNOR, P.C.


L. Sidney Connor, IV
Post Office Drawer 14547
Surfside Beach, SC 29587
(843) 238-5648
sconnor@classactlaw.net
Attorney for Defendant/ Respondent Michael Cousins
Founders Five, LLC d/b/a Sperry Van Ness Founders Group

June 22, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 16-CP-26-3338

Andrew Waldo; Jane Zheng; and)
SC Coast Properties, LLC d/b/a)
Keller Williams Realty,)

Appellants,)

vs.)

Michael Cousins; Founders Five)
LLC d/b/a Sperry Van Ness)
Founders Group; and South Carolina)
Association of REALTORS,)

Respondents.)

**MEMORANDUM IN SUPPORT OF
RESPONDENT MICHAEL COUSINS'
MOTION TO ENFORCE ARBITRATION
AWARD AND ENTER JUDGMENT**

HORRY COUNTY
2016 JUN 30 PM 1:43
MELANIE H. CLARK
CLERK OF COURT

This matter involves a dispute over a commission for the sale of real estate. of the sale of certain golf course property, a commission was generated in the amount of \$500,000. Broker Andrew Waldo claimed the entire commission of \$500,000. Broker Michael Cousins claimed one-half of that commission in the amount of \$250,000.

Andrew Waldo filed an Arbitration proceeding with the South Carolina Association of REALTORS. A full arbitration hearing was held on February 2, 2016 resulting in an award of \$250,000 to Michael Cousins. See Award of Arbitrators attached. That ruling was appealed by Mr. Waldo and the Appeal was heard on May 2, 2016. See Decision of Procedural Review Hearing Tribunal attached hereto with cover letter.

Defendant Michael Cousins request this Court to enter an Order enforcing the Arbitration Award and entering judgment against the Plaintiff Andrew Waldo in the amount of \$250,000.

KELAHER, CONNELL & CONNOR, P.C.

L. Sidney Connor, IV
Post Office Drawer 14547
Surfside Beach, SC 29587
(843) 238-5648
sconnor@classactlaw.net
Attorney for Defendant/ Respondent Michael Cousins
Founders Five, LLC d/b/a Sperry Van Ness Founders Group

June 22, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 16-CP-26-3338

Andrew Waldo; Jane Zheng; and)
SC Coast Properties, LLC d/b/a)
Keller Williams Realty,)

Appellants,)

vs.)

Michael Cousins; Founders Five,)
LLC d/b/a Sperry Van Ness)
Founders Group; and South Carolina)
Association of REALTORS,)

Respondents.)

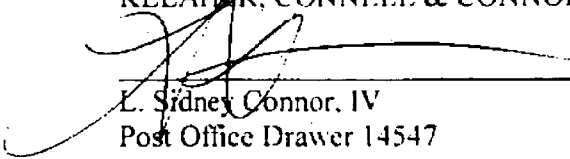
**NOTICE OF MOTON AND MOTION
OF RESPONDENT MICHAEL COUSINS
TO CONFIRM ARBITRATION AWARD
AND ENTER JUDGMENT**

**TO: DOUGLAS M. ZAYICEK, ATTORNEY FOR ANDREW WALDO AND
MARCUS A. MANOS, ATTORNEY FOR SOUTH CAROLINA ASSOCIATION
OF REALTORS**

YOU WILL PLEASE TAKE NOTICE that on the tenth (10th) day after service hereof, or as soon hereafter as counsel may be heard, counsel for the above-named Defendants Michael Cousins and Founders Five LLC d/b/a Sperry Van Ness Founders Group will move before this Court for an Order confirming the Arbitration Award of the South Carolina Association of Realtors and entering judgment accordingly, pursuant to S.C. Code §15-48-120. The grounds for this motion are that this matter was arbitrated before the South Carolina Association of Realtors and an award rendered in favor of Michael Cousins against Andrew Waldo in the amount of \$250,000. All appeals have been exhausted before the South Carolina Association of Realtors and the arbitration rules of the South Carolina Association of Realtors allow the

prevailing party to petition the Circuit Court for confirmation of the award and entry of judgment. This motion is further supported by the attached Memorandum.

KELAHER, CONNELL & CONNOR, P.C.


L. Sidney Connor, IV

Post Office Drawer 14547

Surfside Beach, SC 29587

(843) 238-5648

sconnor@classactlaw.net

Attorney for Defendant/ Respondent Michael Cousins

Founders Five, LLC d/b/a Sperry Van Ness Founders Group

March 6, 2017

RULE 11 CERTIFICATION

The attorney(s) below hereby certifies that either:

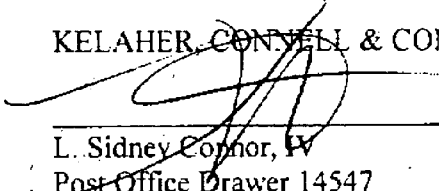
A. He/She has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the motion; or

B. Such consultation would serve no useful purpose, or could not be timely held; or

C. Due to the nature of the motion, there is no duty to consult opposing counsel in that this is a motion:

- a. To Dismiss
- b. For Summary Judgment
- c. For New Trial
- d. For Judgment NOV

KELAHER, CONNELL & CONNOR, P.C.



L. Sidney Connor, IV
Post Office Drawer 14547
Surfside Beach, SC 29587
(843) 238-5648
sconnor@classactlaw.net
Attorney for Defendant/ Respondent Michael Cousins
Founders Five, LLC d/b/a Sperry Van Ness Founders Group

March 6, 2017

2017 MAR -9 PM 3:06

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 16-CP-26-3338

Andrew Waldo; Jane Zheng; and)
SC Coast Properties, LLC d/b/a)
Keller Williams Realty.)

Appellants.)

vs.)

Michael Cousins; Founders Five)
LLC d/b/a Sperry Van Ness)
Founders Group; and South Carolina)
Association of REALTORS.)

Respondents.)

**MEMORANDUM IN SUPPORT OF
RESPONDENT MICHAEL COUSINS'
MOTION TO ENFORCE ARBITRATION
AWARD AND ENTER JUDGMENT**

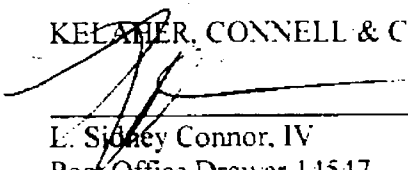
This matter involves a dispute over a commission for the sale of real estate. As a result of the sale of certain golf course property, a commission was generated in the amount of \$500,000. Broker Andrew Waldo claimed the entire commission of \$500,000. Broker Michael Cousins claimed one-half of that commission in the amount of \$250,000.

Andrew Waldo filed an Arbitration proceeding with the South Carolina Association of REALTORS. A full arbitration hearing was held on February 2, 2016 resulting in an award of \$250,000 to Michael Cousins. See Award of Arbitrators attached. That ruling was appealed by Mr. Waldo and the Appeal was heard on May 2, 2016. See Decision of Procedural Review Hearing Tribunal attached hereto with cover letter.

This Motion is brought pursuant to S.C. Codes §15-48-120 and §15-48-170.

Defendant Michael Cousins request this Court to enter an Order enforcing the Arbitration Award and entering judgment against the Plaintiff Andrew Waldo in the amount of \$250,000.

KELLY, CONNELL & CONNOR, P.C.



E. Sidney Connor, IV
Post Office Drawer 14547
Surfside Beach, SC 29587
(843) 238-5648
sconnor@classactlaw.net
Attorney for Defendant/ Respondent Michael Cousins
Founders Five, LLC d/b/a Sperry Van Ness Founders Group

March 6, 2017



EXCLUSIVE RIGHT TO BUY BUYER AGENCY CONTRACT

1. APPOINTMENT OF BROKER: By this contract Nick Dou

("Buyer") appoints Broker in Charge of Jane Zheng, Keller Williams - Myrtle Beach South Company ("Broker") as Buyer's exclusive agent, subject to the terms and conditions stated in this Contract. By appointing Broker as Buyer's exclusive agent, Buyer agrees to conduct all negotiations for the types of property described in Section 2 below through Broker, and refer to Broker all inquiries made to Buyer about such properties from other brokers, salespersons, sellers and others during the term of this contract. "Negotiation" as used in this agreement shall mean property shown, negotiated, or information requested by Buyer through Broker.

2. PURPOSE OF AGENCY: Buyer desires to purchase or lease real property (which may include items of personal property) described as follows:

Type: ☐ Residential ☐ Commercial ☐ Industrial ☐ Vacant Land ☐ Other

General Description: all real estate types

Approximate Price Range: \$ 0-5M

General Location: Horry county and Georgetown County

Preferred Terms: 6 months

Other: _____

3. BROKER'S DUTIES: (a) The Broker shall provide to Buyer a meaningful explanation of agency and shall use Broker's professional real estate knowledge and skills to represent the Buyer in a diligent and effective manner and to locate property which is available for purchase or lease and suitable to the Buyer; (b) if the Broker is not representing the seller, the Broker shall represent solely the interest of the Buyer in all negotiations and transactions regarding the acquisition of real property, and repudiate any agency or subagency relationship with the seller or the company representing the seller and shall not claim the subagency compensation offered to the selling broker in the Multiple Listing Service; (c) if the Broker represents the seller as well as the Buyer (i.e., disclosed dual agency), the Broker shall **not** disclose to the Buyer information obtained within the confidentiality and trust of the fiduciary relationship with the seller, nor disclose to the seller information similarly obtained from the Buyer, without the consent of the party adversely affected by the disclosure; (d) the Broker may represent other buyers who may be interested in the same property as the Buyer. Upon the termination or completion of this agreement, Broker shall keep confidential all information received during the course of this agreement which was made confidential by written request or instructions from the client, except as provided for under South Carolina law.

Broker represents that Broker is duly licensed under the laws of the State of South Carolina as a real estate broker. Broker will use his best efforts as Buyer's agent to locate property of the type described in Section 2 of this contract and to negotiate acceptance of any offer by Buyer to purchase or lease such property. During the term of this Contract, Broker will give Buyer information describing and identifying properties that appear to Broker to substantially meet the conditions set forth in Section 2.

4. BUYER'S DUTIES. BUYER AGREES TO:

(A) Work exclusively with Broker and its Affiliated licensees during the term of this agreement by: (1) viewing any property (previewing, etc.) only with Broker or Broker's designated representative and not with another real estate broker, salesperson or seller; and (2) exclusively allowing Broker or Salesperson to identify property, negotiate for Buyer and otherwise to represent Buyer; and (3) referring to Broker all inquiries received in any form from any other real estate broker or affiliated licensees; and (4) holding Broker harmless from liability as a result of incomplete/inaccurate information provided to Broker by Buyer or Seller; (5) holding Broker harmless from liability as a result of Seller's failure to provide a complete Seller's Property Condition Disclosure statement; and (6) indemnifying Broker against all claims, damages, losses, expenses, or liability arising from the handling of earnest money by anyone other than Broker.

(B) Assist Broker and its Affiliated Licensees in the process of identifying, negotiating and contracting to purchase, lease or otherwise acquire by: (1) providing Broker with reliable information (including financial information and written authorization to obtain verification of funds) that Broker deems necessary for the performance of this Agreement; and (2) making himself available to meet with Broker and to see properties, in order that the Broker will be able to perform the promises of the Brokerage Engagement.

(C) Provide Broker and its Affiliated Licensees the following information: (1) general nature, location, and requirements of desired property; and (2) price range, and other terms and conditions relating to desired property.

(D) To authorize Buyer's attorneys and the settlement agent to furnish to Broker copies of the final HUD-1 settlement statement for the transaction prior to the closing date.


05/02/14
12:12PM EDT

BUYER



BUYER


05/02/14
11:22AM EDT

BROKER HAVE READ THIS PAGE

Form 130
PAGE 1 OF 4

5. COMPENSATION OF BROKER: Brokers fees will be deemed earned when Buyer is under contract to purchase any property presented by Broker or negotiated by Buyer. This fee will be due and payable at closing or upon Buyer's default. If Buyer defaults, the total compensation that would have been due Broker will be due and payable immediately in cash from the Buyer. In consideration of the services performed by Broker under the terms of this Contract, Buyer agrees to pay Broker the following fee(s): **(CHECK ALL APPLICABLE SECTIONS)**

☐ a. **Retainer Fee:** Buyer will pay Broker a nonrefundable retainer fee of \$ _____ due and payable upon the signing of this contract. This fee ☐ shall or ☐ shall not be credited against the Brokerage fee.

☐ b. **Service Fee:** Buyer shall pay Broker a Service Fee of \$ _____ to be paid on _____, whether or not Buyer purchases any property. **(Check applicable sub-section.)**

- ☐ This Service Fee shall be the only fee due Broker from Buyer under the terms of this Contract.
- ☐ This Service Fee shall be credited against the Brokerage Fee described in subsection (c) below and shall be kept by Broker whether or not a Brokerage Fee is earned.
- ☐ This Service Fee shall be credited against the Brokerage Fee described in subsection (c) below and shall be kept by Broker whether or not a Brokerage Fee is earned, unless Buyer enters into a purchase and sale agreement. In the event that Buyer enters into a purchase and sale agreement, Buyer and Broker agree that the above Service Fee will be credited against the Brokerage Fee as defined below.

☐ c. **Brokerage Fee:** Buyer shall pay Broker a Brokerage Fee which is the greater of \$ _____ or _____ % of the purchase or total lease price (renewal, if applicable) of any property purchased or leased by Buyer, including "For Sale by Owner" properties. If within _____ days after the expiration of this Contract Buyer purchases or leases any property which Broker has negotiated during the term of this Contract, Buyer will pay Broker the Brokerage Fee stated above. Broker shall use his best efforts to obtain payment of the Brokerage Fee out of the transaction, but Buyer shall have the obligation to pay Broker the Brokerage Fee set forth in this Contract if Broker cannot obtain payment of such fee out of the transaction. Any fees paid by the seller or seller's agent shall be credited against the Brokerage fee.

☒ d. **Brokerage Fee:** Broker shall obtain payment of the Brokerage Fee out of the transaction. Broker shall be paid by the cooperating broker as stated in the Multiple Listing Service or as agreed to by the Broker and cooperating broker, or as agreed to by the Broker and Seller in a "For Sale By Owner" transaction. Buyer shall not be responsible for paying Broker the Brokerage fee.

6. TERM OF AGENCY: Broker's authority to act as Buyer's exclusive agent under the terms of this Contract shall begin on 05/01/2014 and shall end at 11:59 p.m. on 11/01/2014.

7. CONSENT TO DISCLOSED DUAL AGENCY/DESIGNATED AGENCY: (INITIAL APPLICABLE CHOICES)

☒ Buyer acknowledges receiving an explanation of the types of agency relationships that are offered by brokerage and an Agency Disclosure Form at the first practical opportunity at which substantive contact occurred between the Broker and Buyer.

Buyer acknowledges that after entering into this written agency contract, agent might request a modification in order to act as a **dual agent** or a **designated agent** in a specific transaction. If asked:

- | | |
|-------------------------------------|--|
| ☐ | Permission to act as a dual agent will not be considered. |
| ☒ | Permission to act as a dual agent may be considered at the time I am provided with information about the other party to a transaction. If Buyer agrees, Buyer will execute a separate written Dual Agency Agreement . |
| ☐ | Permission to act as a designated agent will not be considered. |
| ☐ | Permission to act as a designated agent may be considered at the time I am provided with information about the other party to a transaction. If Buyer agrees, Buyer will execute a separate written Designated Agency Agreement . |

8. OTHER POTENTIAL BUYERS: Buyer understands that other potential buyers have entered into similar agency contracts with Broker which may involve the purchase or lease, through Broker of the same or similar property or properties as Buyer is attempting to purchase or lease. Buyer consents to Broker's representation of such other buyers.

☐ BUYER ☐ BUYER ☒ **BROKER HAVE READ THIS PAGE**

9. INDEMNIFICATION OF BROKER: Buyer promises to disclose to Broker whether Buyer has signed any agency agreement with any other Broker, or has been given prior information about any property that is the subject of this Contract by any other Broker or salesperson, or has previously been shown any such property by any other broker or salesperson. If Buyer fails to tell Broker about such other broker's or salesperson's involvement, and Broker incurs any loss or damage as a result of any claim being brought against him on account of such involvement, due to no fault of Broker, then Buyer shall pay Broker all such losses and damages incurred by Broker because of such claim.

10. DISCLOSURE OF BUYER'S IDENTITY/CONFIDENTIALITY: The Broker ☐ does or ☒ does not have the Buyer's permission to disclose Buyer's identity to all property owners and other third parties. The Buyer is advised of the possibility that seller or seller's agent may not treat the existence, terms, or conditions of offers as confidential unless confidentiality is required by law, regulation, or by confidentiality agreement of the parties.

11. NONDISCRIMINATION: Broker and Buyer agree that all actions carried out under this contract shall be in full compliance with local, state, and federal fair housing laws against discrimination on the basis of race, creed, color, religion, national origin, sex, familial status, marital status, age or disabilities.

12. PROFESSIONAL COUNSEL: Buyer acknowledges that Broker is being retained solely as a real estate agent and not as an attorney, tax advisor, lender, appraiser, surveyor, structural engineer, home inspector or other professional service provider. Buyer agrees to seek professional advice concerning the condition of the property, legal, tax and other professional service matters.

13. MEDIATION CLAUSE: Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by Buyer or Broker in connection with the services to which this Agreement pertains, including without limitation, allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding. This mediation clause shall survive for a period of 120 days after the date of the closing.

14. SEX OFFENDER REGISTRY INFORMATION: The Buyer and Broker agree that during the course of the agency relationship, referred to in the above mentioned agreement, the Broker and all affiliated agents shall not be responsible for obtaining or disclosing any information contained in the official South Carolina Sex Offender Registry. The Buyer understands that no course of action may be brought against the Broker or his affiliates for failing to obtain and disclose information contained in the official South Carolina Sex Offender Registry. The Buyer understands and agrees that the Buyer shall be responsible for obtaining any such information. The Buyer understands that Sex Offender Registry information may be obtained from the local Sheriff's Department or other appropriate law enforcement officials.

15. ENTIRE BINDING AGREEMENT: This written instrument, including the additional terms and conditions set forth on the reverse, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Broker. It can be changed only by a subsequently written instrument signed by both parties.

16. CONTINGENCIES:

17. FACSIMILE AND OTHER ELECTRONIC MEANS: The parties agree that this Agreement may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.



BUYER



BUYER



BROKER HAVE READ THIS PAGE

Form 130
PAGE 3 OF 4

THIS IS A LEGALLY BINDING AGREEMENT. BUYER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BUYER AND BROKER ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT. BUYER AGREES TO RECEIVE COMMUNICATIONS FROM BROKER AT THE EMAIL ADDRESS, PHONE AND FAX NUMBER LISTED BELOW.

Nick Dow
BUYER Date Time

dotloop verified
05/02/14 12:12PM EDT
TQOM-PSAD-AEWG-FLXJ

Email: _____

Phone: _____

Fax: _____

BUYER Date Time

Email: _____

Phone: _____

Fax: _____

BUYER Address: _____

Keller Williams - Myrtle Beach South
BROKER/BUYER'S AGENT COMPANY

BY: *Jane Zheng*
Broker/Licensee Date Time

dotloop verified
05/02/14 11:22AM EDT
MLUG-SJPS-DHHU-KYW6

The foregoing form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®. REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics. Expressly prohibited is the duplication or reproduction of such form or the use of the name "South Carolina Association of REALTORS®" in connection with any written form without the prior written consent of the South Carolina Association of REALTORS®. The foregoing form may not be edited, revised, or changed without the prior written consent of the South Carolina Association of REALTORS®.

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

AGREEMENT OF PURCHASE AND SALE
[MYRTLE BEACH NATIONAL COURSES]

THIS AGREEMENT OF PURCHASE AND SALE (the "Agreement"), dated April 22, 2015 (the "Effective Date"), is entered into by and between **MYRTLE BEACH NATIONAL PROPERTIES**, a South Carolina general partnership (the "Seller"), and **FOUNDERS NATIONAL GOLF, LLC**, a South Carolina limited liability company, or its assigns (the "Purchaser").

RECITALS

WHEREAS, the Seller, is the owner of certain land and the improvements thereon located in Horry County, South Carolina comprising three 18-hole golf courses and related improvements currently operated as the Southcreek Course, the West Course and the King's North Course (collectively, the "**Golf Courses**"), as described more fully herein below; and

WHEREAS, Seller has agreed to sell all of its right, title and interest in and to the Golf Courses to Purchaser, and Purchaser has agreed to purchase all of Seller's interest in the Golf Courses, all according to the terms, conditions and limitations described herein;

NOW, THEREFORE, for and in consideration of the above premises, the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT TO SELL AND PURCHASE

Seller agrees to sell and convey all of its right, title and interest in and to the Property defined below to Purchaser or its designee, and Purchaser agrees to purchase the Property from Seller on the terms and conditions set forth in this Agreement.

1. **The Property.** The Property includes the following:

- The real property described on the attached **Exhibit A** attached hereto and incorporated herein comprising the Golf Courses, including but not limited to, all of Seller's rights to any submerged land lying within any ponds or lakes lying within the boundaries thereof (collectively, the "**Golf Course Land**").
- Seller's interest, if an, in any development rights, licenses, permits, consents, and authorizations with respect to the Property issued by any governmental authority or utility service provider, to the degree they are assignable, together with all permits, licenses, easements and other rights and privileges appurtenant to the Golf Course Land, including, but not

an event of default under this Agreement, but instead Purchaser may, at its election and as its sole remedy, terminate this Agreement by delivery of written notice to Seller, subject only to the Surviving Obligations.

Representations and Warranties of Purchaser. Purchaser represents and warrants to Seller that

(i) Purchaser has full power and authority to enter into this Agreement and to acquire the Property in accordance with the terms of this Agreement.

(ii) The execution and performance of this Agreement and the Closing Documents by Purchaser, and the consummation of the Closing, will not conflict with any provision of law applicable to Purchaser, nor will it result in the breach of any provision of, or constitute a default under, any court order, agreement or instrument to which Purchaser is a party or by which Purchaser is bound.

(iii) This Agreement and the Closing Documents to be delivered by Purchaser have been or will be duly authorized by all necessary company action on the part of Purchaser, and have been or will be duly executed and delivered by Purchaser and no further action or approval is required in order to constitute this Agreement as a binding and enforceable obligation of Purchaser.

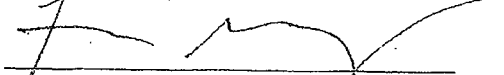
16. Commissions and Finder's Fees. Purchaser and Seller each agree, represent and warrant to the other that no broker's or real estate commissions will be due as a result of the sale of the Property from their respective actions, other than commissions due to the Purchaser's agent, Keller-Williams office in Myrtle Beach, South Carolina (Jane Zhang, agent) under separate commission agreement. Seller agrees to pay the sum of \$157,900.00 in such commissions upon the consummation of the Closing and the payment of the Purchase Price. Seller consents to such fees being paid directly by the closing agent. Seller agrees to indemnify, defend and save Purchaser harmless from and against any cost and expense (including reasonable attorneys' fees) incurred by Purchaser as a result of the untruth of the foregoing representation by Seller, or any claims by a broker for payment of a commission by Purchaser based upon the actions of Seller, or Seller's officers, agents or employees. Purchaser agrees to indemnify, defend and save harmless the Seller from and against any cost and expense (including reasonable attorneys' fees) incurred by Seller as a result of the untruth of the foregoing representation by Purchaser, or any claims by a broker for payment of a commission by Seller based upon the actions of Purchaser, or Purchaser's officers, agents or employees.

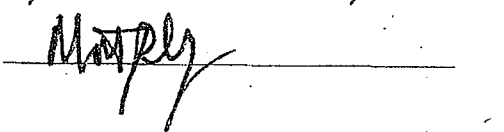
The Purchaser hereby acknowledges that the Seller has relatives that are currently licensed in the State of South Carolina as Real Estate Brokers that are not participating in this transaction as follows: Arthur H. Cottingham III, husband of M. Russell Holliday, Jr. with license #7003; and David D. Douglas husband of Christian M. H. Douglas with license # 8603.

17. Indemnity and Hold Harmless. Seller hereby agrees to indemnify and hold Purchaser harmless from and against any and all charges, demands, damages, actions and causes of action, including but not limited to reasonable attorneys' fees, arising out of the ownership of

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

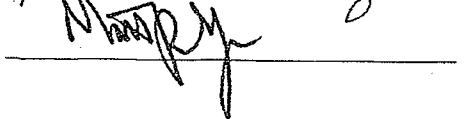
WITNESSES:





WITNESSES:





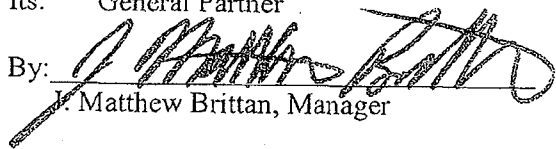
Seller:

MYRTLE BEACH NATIONAL PROPERTIES,
a South Carolina general partnership

By: National Golf Management, LLC

Its: General Partner

By:

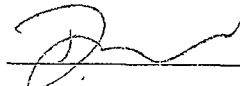

J. Matthew Brittan, Manager

Purchaser:

FOUNDERS NATIONAL GOLF, LLC

By:

Its:



Manager