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SCT-Civ-2022-0002  
VERONICA HANDY, ESQUIRE  
CLERK OF THE COURT

**IN THE SUPREME COURT OF THE VIRGIN ISLANDS**

**CONSOLIDATED CASES:**

**SCT-CIV-2022-0002**

**SCT-CIV-2022-0024**

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GREAT BAY CONDOMINIUM OWNERS ASSOCIATION,  
INC.,  
Appellant\Plaintiff,

v.

THE NEIGHBORHOOD ASSOCIATION, INC.,  
Appellee\Defendant.

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On Appeal from the Superior Court of the Virgin Islands  
Civil Action No. 2018-CV-00768  
(Honorable Rene Gumbs-Carty)

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**JOINT APPENDIX**

**A.000001 – A.01651**

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Great Bay Condominium Owners Association, Inc. v. The Neighborhood  
Association, Inc.  
Consolidated Cases: SCT-CIV-2022-0002  
And SCT-CIV-2022-0024  
Joint Appendix  
May 27, 2022

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Respectfully submitted,

DATED: May \_\_\_\_\_, 2022

/s/ W. Mark Wilczynski

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V.I. BAR NO. 515

Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.

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- and -

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 27<sup>th</sup> day of May 2022, that a true and correct copy of the foregoing **JOINT APPENDIX** was served via the Court's electronic filing system upon the following counsel of record:

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***Counsel for Appellee/Defendant***

By:  /s/ W. Mark Wilczynski

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.	)	
	)	CIVIL NO. ST-18-CV-768
PLAINTIFF,	)	
V.	)	ACTION FOR DECLARATORY JUDGMENT, TO CANCEL DEED AND TO QUIET TITLE
THE NEIGHBORHOOD ASSOCIATION, INC.	)	
	)	
DEFENDANT.	)	

**MOTION FOR TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION**

COMES NOW, the Defendant, The Neighborhood Association, Inc. (“NA”), by and through undersigned counsel, Hodge & Hodge, and hereby moves for a temporary restraining order and preliminary injunction against Plaintiff, Great Bay Condominium Owners Association, Inc. (“Great Bay”). Great Bay has initiated an unlawful and improper campaign to assess the individual members of NA, with years of retroactive dues assessments for the commercial unit designated CU-1 in this litigation, purporting to rely upon a baseless interpretation of the governing condominium documents that require owners of units to pay such charges, even as Great Bay has present before this Court the undecided claims in its suit seeking a declaration that it is not the owner of the unit in question, despite having title of record thereto in the records of the Office of the Recorder of Deeds. In pursuit of its evasion of the authority of the Court to decide that claim, Great Bay has suddenly issued invoices to the individual members of NA who own separate interests in residential condominiums at the property, with a demand that they pay these disputed and unlawful claims by November 22, 2021, or face eviction or lockout from their residences. This imminent threat of self-help by the Plaintiff forces NA to bring the present motion seeking a



temporary restraining order and preliminary injunction, to preserve the status quo and protect NA and its owners from the discriminatory and illegal actions now being taken. These threats are currently outstanding, and despite demand, have not been withdrawn, as evidenced by the attached memorandum of law, exhibits, and affidavit. Defendant has demonstrated that (1) there is a reasonable probability of eventual success in this litigation and on this present threatened illegal conduct; (2) if injunctive relief is denied, NA and its members will suffer irreparable harm; (3) the harm to Great Bay is not outweighed by the harm to NA and its members if the requested relief is granted; and (4) the public interest favors injunctive relief in this case.

The attached memorandum of law, exhibits, and affidavit further demonstrate that Great Bay was notified, by and through its counsel, of Defendant's intent to move for a temporary restraining order, as Defendant's counsel telephonically informed Plaintiff's counsel of its intent to move for a temporary restraining order if Plaintiff did not voluntarily cease the unauthorized conduct, and Defendant's counsel caused a copy of the moving papers to be sent to Plaintiff's counsel via email. As irreparable harm to NA and its members is and will continue to occur before Plaintiff can be heard in opposition to the instant motion, Defendant respectfully requests that this Court enter a temporary restraining order enjoining Great Bay from engaging in the conduct complained of, including issuing or taking any steps to enforce or collect any invoice for dues or common charges for CU-1 to NA or to any member of NA, or to take any steps to obstruct, impair or preclude full use and occupancy by NA members of their residences at the Ritz-Carlton for a period of fourteen (14) days, and thereafter if the Court should so order.

WHEREFORE, Defendant, NA respectfully requests that this Court enter an order granting the instant motion, entering a temporary restraining order against Plaintiff, Great Bay, for a period

of fourteen (14) days, scheduling a preliminary injunction hearing as soon as practicable, and granting such other and further relief as the Court deems just.

DATED: November 12, 2021

RESPECTFULLY SUBMITTED,

/s/ Maria T. Hodge  
HODGE & HODGE  
By: Maria Tankenson Hodge (VI Bar #170)  
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maria@hodgelawvi.com

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 12th day of November, 2021, a true and correct copy of the foregoing was served via the Court's electronic filing system, with a copy sent via email, to:

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Law Offices of W. Mark Wilczynski, P.C.  
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*Counsel for Plaintiff*

/s/ Maria T. Hodge -

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
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GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.	)	
	)	CIVIL NO. ST-18-CV-768
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THE NEIGHBORHOOD ASSOCIATION, INC.	)	
	)	
DEFENDANT.	)	

**ORDER FOR TEMPORARY RESTRAINING ORDER**

UPON MOTION of the Defendant, The Neighborhood Association, Inc. (“NA”), for a temporary restraining order against Plaintiff, Great Bay Condominium Owners Association, Inc. (“Great Bay”), under the authority of V.I.R.Civ.P. 65(b), and the Court having reviewed the motion, supporting memorandum of law, and affirmation in support thereof, hereby concludes that NA and its members have clearly shown that immediate and irreparable injury, loss or damage, will result to the movant before Great Bay can be heard in opposition, such injury consisting of the imposition upon the individual condominiums of the NA members, of a lien for common charges for that certain commercial unit described as “CU-1” or the “Grand Palazzo Lounge”, with the associated threat that NA’s members will be subjected to “lockout” from the use of their condominium residences and amenities to which they are entitled as the owners of such residences and as members of the Ritz-Carlton Destination Club as a rightful amenity of such ownership, if they do not pay the disputed assessments, which have been issued against their private residential interests by Great Bay while its action to determine ownership of CU-1 is pending and undecided, so that ownership of that unit, and responsibility for any valid common charges or dues therefore,

which would be the responsibility of the Owner of CU-1, has not yet been determined by this Court, and so that NA's members would effectively be coerced or compelled by this disputed assessment to make payments they do not owe, upon threat of loss of use of their residences while this case is pending, and the Court therefore concluding that Great Bay has initiated an unlawful and improper campaign to assess the individual members of NA, with years of retroactive dues assessments, purporting to rely upon a dubious interpretation of the governing condominium documents that require owners of residential units to pay such charges for this separate commercial unit, even as Great Bay has present before this Court the undecided claims in its suit seeking a declaration that it is not the owner of the commercial unit in question, despite having title of record thereto in the records of the Office of the Recorder of Deeds. In pursuit of its evasion of the authority of the Court to decide that claim, Great Bay has suddenly issued invoices to the individual members of NA who own separate interests in condominiums at the property, with a demand that they pay these disputed and apparently unlawful claims by November 22, 2021, or face eviction or lockout from their residences. This imminent threat of self-help by the Plaintiff constitutes a sufficient showing of irreparable harm to NA and its members, warranting issuance of this temporary restraining order, to preserve the status quo and protect NA and its owners from the threatened discriminatory and presumptive illegal actions now being taken. These threats are currently outstanding, and despite demand, have not been withdrawn, as evidenced by the affidavit of NA.

Accordingly, the Court finds that Defendant has demonstrated that (1) there is a reasonable probability of eventual success in this litigation and on this present threatened illegal conduct; (2) if injunctive relief is denied, NA and its members will suffer irreparable harm; (3) the harm to Great Bay is not outweighed by the harm to NA and its members if the requested relief is granted;

and (4) the public interest favors injunctive relief in this case.

NOW, THEREFORE, IT IS HEREBY ORDERED that Great Bay, and all persons acting in concert with Great Bay, be and are hereby ordered to rescind the invoices to NA members for dues and common charges for CU-1, and from taking any action to impose a lien related thereto, or from taking any steps to Lock Out or otherwise impair, restrain or obstruct in any way the use by NA's members or their residences, condominiums, or the common areas at the Ritz-Carlton, or other membership rights and amenities, for a period of fourteen (14) days from the date of this order, commencing on the date and hour set forth below, and it is further

ORDERED that this matter shall come on for hearing upon NA's motion for a preliminary injunction to continue the order here entered on November \_\_\_\_\_, 2021, at \_\_\_\_\_, in the Superior Court of the Virgin Islands, to be conducted by Zoom with an invitation to issue by the Clerk of the Court to the parties and their witnesses.

SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2021, at \_\_\_\_\_ o'clock \_\_.

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HONORABLE RENE GUMBS CARTY  
JUDGE OF THE SUPERIOR COURT

**ATTEST:**

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**Clerk of the Court**

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.	)	
	)	CIVIL NO. ST-18-CV-768
PLAINTIFF,	)	
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THE NEIGHBORHOOD ASSOCIATION, INC.	)	
	)	
DEFENDANT.	)	

**ATTORNEY'S AFFIRMATION**

I, Maria Tankenson Hodge, an attorney admitted to practice in the Courts of the Virgin Islands, hereby submit this statement of affirmation, in lieu of an affidavit, in accordance with Section 699 of Title 5 of the Virgin Islands Code, affirming the following under penalties of perjury, that:

1. I am an adult resident of the U.S. Virgin Islands and I am competent to make this Affidavit.
2. I am a partner in the law firm of Hodge & Hodge, which was retained to represent Defendant, The Neighborhood Association, Inc. ("NA") in the above-captioned matter, and I am the attorney primarily responsible for representing NA in the above-captioned matter.
3. I have personal knowledge of the matters set forth herein.
4. On November 12, 2021, I communicated telephonically with Attorney W. Mark Wilczynski ("Attorney Wilczynski"), counsel for Plaintiff, Great Bay Condominium Owners Association, Inc. ("Great Bay") in this matter, informing Attorney Wilczynski of Defendant's intention to move for a temporary restraining order if Plaintiff did not immediately and voluntarily

withdraw the invoices for assessment of dues for CU-1 and associated memorandum, sent to NA members, and withdraw any threat of enforcement thereof by lockout or eviction from their residences.

5. After agreeing to allow a requested period of 30 minutes for Attorney Wilczynski to confer with his clients, I did not receive a reply and I understand from this that Plaintiff would not immediately and voluntarily agree to the requested remedial action, to give the court time to schedule a hearing on a motion for preliminary injunction.

6. I also served a copy of the motion for temporary restraining order, memorandum in support, and affirmation in support, by email on Attorney Wilczynski after our phone call.

7. This Affirmation is executed for the sole purpose of obtaining a temporary restraining order and preliminary injunction against Plaintiff in the above-captioned matter.

Dated: November 12, 2021

/s/ Maria T. Hodge  
Maria Tankenson Hodge

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
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GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.	)	
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THE NEIGHBORHOOD ASSOCIATION, INC.	)	
	)	
DEFENDANT.	)	

**MEMORANDUM IN SUPPORT OF MOTION FOR  
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

**INTRODUCTION**

Defendant, The Neighborhood Association, Inc. (“NA”), submits this memorandum in support of its motion for a temporary restraining order and preliminary injunction. The need for this emergency relief arises because of the sudden indefensible actions of the Plaintiff which threaten the right of NA’s members to the very use of their own condominiums. Plaintiff, Great Bay Condominium Owners Association, Inc. (“Great Bay”) has suddenly, unilaterally and improperly assessed the individual owners of condominiums that are members of NA, for the full amount of years of past common charges Great Bay has presumed to assess for the commercial condominium unit, CU-1, that was transferred by deed from NA to Great Bay in 2017. This targeted, unlawful, and retroactive assessment by Great Bay, upon individual NA members, of dues for a condominium unit they do not now and have never owned, has been announced by Great Bay, in direct disregard of the claims pending in this case before this court, which will determine the validity of the deed delivered by NA to Great Bay for that very unit. Not only has Great Bay imposed these baseless assessments on NA’s members, but it has exposed them to an explicit threat that they will be “locked out” of their own *residential condominiums* if they do not pay the



demanded sums within days.

Evidently having grown tired of waiting for the Court to determine the legal issues in this case, including title to Unit CU-1 and whether cancellation of the recorded deed to Great Bay for that unit has somehow been proven justified, Great Bay has now assumed to itself the power to determine that the owners of suites that are members of NA – and only those owners – are to be personally assessed the amounts Great Bay claims are owed for common charges for the *commercial Unit*, going back to the year 2017 and continuing to 2021. In order to enforce this unilateral action, Great Bay has demanded full payment of these years of retroactive assessments from NA's members, **by November 22, 2021, under threat that failure to pay these demanded sums will result in imposition of sanctions, including “lock out” from the NA member’s own residential units**, exclusion of use of condominium amenities, and numerous other financial and personal penalties. The shocking scope and nature of these punitive impositions are detailed in the sworn affirmation of Salvatore Cutrona, president of NA, attached, in support of this motion.

This unlawful and wholly improper conduct by Great Bay, and the punitive threatened enforcement action, are causing NA and its members to suffer irreparable harm as detailed in the supporting affirmation. The express terms of the applicable condominium Declarations and relevant sections of the Virgin Islands Code, clearly demonstrate that NA is likely to succeed on the merits in this action, including both the validity of the recorded deed to CU-1 given to Great Bay, and the merits of the objection to this sudden interlocutory punitive action of the Plaintiff, to assess dues for that unit upon a group of non-owners. As Plaintiff has refused to voluntarily withdraw the improper assessment on NA's members, and facing the threat of “lock out” and other penalties, NA has no adequate remedy at law, and entry of a temporary restraining order and preliminary injunction is clearly warranted.

**I. RELEVANT FACTUAL BACKGROUND**

As set forth in the affidavit of Salvatore Cutrona (“Cutrona”), President of the Board of NA, attached hereto as Exhibit 1, Plaintiff, Great Bay, has unilaterally undertaken to assess huge sums in retroactive “dues” upon the individual members of NA, purporting to be the amounts that would be owed by the owner of the very commercial unit (CU-1), that is the subject of this litigation, without awaiting determination by the Court of the merits of Great Bay’s challenges to its own record title to that unit. In a bizarre and tortured interpretation of the condominium documents, Great Bay actually contends that it may collect these years of “dues” not from itself, as the owner of the unit, but members of NA, who never owned the unit.

A brief history of this dispute is summarized here. Great Bay is a condominium association consisting of all owners of condominium units at the Ritz-Carlton Club in St. Thomas. A recorded Declaration of Condominium, including several amendments, documents and specifies the rights and obligations of that association and its members. Great Bay includes a total of 1,260 owners of residences and suites, including all 288 members of the separate association, Defendant, NA. NA, in turn, is also a condominium association, formed for the limited purpose of initially taking ownership of a single commercial unit in the Ritz-Carlton Club complex, called CU-1, operated as a restaurant and lounge on the property. NA is, in effect, a far smaller condominium association, created within the larger association of Great Bay. The members of NA are limited to those persons who own suites or fractional interests in suites located in two buildings within the larger Ritz-Carlton Club complex, numbering a total of 288 owners. All members of NA are also members of Great Bay. However, most of Great Bay’s members are not members of NA.

#### A. THE FOURTH AMENDMENT TO THE DECLARATION

The present litigation was filed by Great Bay against NA after negotiation for NA to deed the lounge (“CU-1”) to Great Bay, long understood and agreed upon, was suddenly aborted by Great Bay, in the aftermath of the 2017 hurricanes. NA, however, elected to proceed with the conveyance of title to CU-1 to Great Bay nonetheless, because the Condominium Declaration, in the Fourth Amendment to that Declaration, expressly provided that they could do so, without requiring consent of the Association, and further provided that Great Bay, the Association, was obligated to accept such a conveyance.

Specifically, the Condominium Documents that created Great Bay, NA, and provided for the creation of CU-1, expressly provided that NA would be the initial owner of CU-1. The Fourth Amendment to the Condominium Declaration provided for the planned creation of NA, stating that it was to be a not for profit corporation “to be organized for the purpose of owning the Commercial Unit CU-1...” The Fourth Amendment also provided very explicitly for the power of NA to convey title to Great Bay, for CU-1. It states, “The Declarant or **any Owner of a Commercial Unit** [which is what NA was as owner of CU-1], **may also convey a Commercial Unit**, or any subdivision thereof in the case of the Declarant, **to the Association for no or nominal consideration without the consent of any other Owner or the Association, and the Association shall be obligated to accept such conveyance.**”<sup>1</sup>

In reliance upon this express grant of power to convey its commercial unit to the Great Bay Association, NA executed and delivered a deed to that unit on September 20, 2017. Although Great Bay subsequently purported to reject this delivery, it was legally powerless to do so, under the governing Declaration, which specified that its consent was not required, and that it was

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<sup>1</sup> Great Bay is the “Association”, under the Declaration of Condominium, as stated in the included Bylaws of Great Bay.

obligated to accept the deed. The deed was duly recorded on March 6, 2018, after NA was forced to pay property taxes that were in doubt to accomplish recording.

The present lawsuit, filed by Great Bay, claims that NA could not convey title to CU-1, based upon a contorted interpretation of the Condominium Documents in which it proposes that NA is the “Association” referred to in the Declaration language quoted above. This construction is contrary to the actual Declaration as recorded. Great Bay offers several other equally unavailing arguments to avoid the reality of its ownership of this unit. NA has denied and disputed those claims, which currently remain pending before the court.

It is, in any event, undeniable, that the court has not ruled in favor of Great Bay on any of its claims, to void or cancel the deed, to quiet title to the unit in NA instead of Great Bay, where record title indisputably resides at present, or to grant a declaratory judgment that NA is the “owner of the subject property known as Commercial Unit CU-1”. (Complaint, Counts I-V). Thus, record title to and ownership of Unit CU-1 is and remains in Great Bay.

Nevertheless, while its suit for relief from its own record title remains pending and undecided, Great Bay has suddenly assumed the power to impose assessments for dues for CU-1, directly upon the individual members of NA – persons who are not by any theory or contention, the owners of the unit, and not even the parties who Great Bay’s suit says should be adjudged the owners. This retroactive assessment on non-owners of the unit, covering years going back to 2017, totals hundreds of thousands of dollars. Further and far worse, Great Bay demands NA’s owners pay these amounts, including massive interest charges and late fees, within a matter of days, not later than November 22, 2021, or face being locked out of their own residences at the resort for non-payment of dues. (See Affidavit of Cutrona, Ex. 1).

In support of this unprecedented act of self-help, Great Bay has offered a tortured interpretation of the Condominium Declaration and its amendments, to suggest that it may go behind the record ownership of the unit, and even behind the *previous* ownership of the unit, to assess dues and common charges upon individuals who are merely members of NA, and owners of their own individual residence suites in the NA association.

In fact, however, the claimed authority of Great Bay for this assessment and threatened lock-out of NA members is directly inconsistent with the documents they rely upon.

The significant provisions in the Fourth Amendment to the Declaration of Condominium, upon which Great Bay relies for its current assessment/lockout threat, include the following:

*“Each **Owner** of a Commercial Unit shall be a Member of the Condominium Association, be subject to the Bylaws and Regulations, hold voting rights and have a Percentage Ownership allocation that is established in accordance with the Declaration, and share in the Common Expenses and the Common Surplus...”*

Thus, it is the *owner* of the Commercial Unit, and not the *members of any entity* that may be an “owner”, that is to share in the obligation for payment of common expenses. When NA was formed, as a non-profit Virgin Islands corporation, and took ownership of CU-1, it was subject to this provision because it was the owner of the unit. Its members were and are not, as they were never the owners of the unit. During its ownership of CU-1, at various times NA was assessed by Great Bay for dues for the unit, and that expense was, in turn, part of the basis for assessment by NA upon its members, for their dues owed to NA. However, when NA ceased to be the owner of CU-1, no such assessments upon NA were proper, and no associated cost to assess upon NA’s members existed. Thus, for years, NA has not and properly does not assess its members for dues for CU-1. Suddenly, it is the shocking action of Great Bay in seeking to impose a direct assessment

of dues upon NA members, not as owners of CU-1 but as persons who have a membership interest in an entity that *formerly owned CU*-that forces the filing of this motion.

Put simply, when NA ceased to be the owner of CU-1, NA, itself, was no longer subject to an obligation to share in common expenses of the larger condominium, according to this Fourth Amendment. From the date on which Great Bay became the owner of the unit, it was the party responsible for payment of the common expenses and any dues associated with that unit as this language makes clear. Thus, its current billing with threatened enforcement by lock out, is clearly improper and unlawful.

The Fourth Amendment also provides that “Each Owner of a Commercial Unit shall enjoy the same rights and benefits as other Owners and Members of the Condominium Association... Each Commercial Unit *and its Owner* shall further be subject to any particular covenants, conditions and restrictions that may be imposed thereon in connection with the creation and conveyance of such Commercial Unit.”

Thus, again, it is the “Owner” of CU-1 that is responsible for its share of common expenses. It is the unit, itself, that is subject to the Association’s lien.<sup>2</sup> There is no language in this Fourth Amendment (upon which Great Bay relies for its current “assessment” scheme) that could ever be construed to allow imposition of a lien upon the separate residential condominium interests of individual members of NA. This is particularly true because of the pending dispute over the validity of the transfer of title of CU-1 from NA to Great Bay which is before this court in this very case.

The same Fourth Amendment also includes this language: “Each Commercial Unit shall be subject to the Association’s *lien and foreclosure rights...*” (page 3) Once again, it is the *unit* –

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<sup>2</sup> In fact, Great Bay has recorded a lien against CU-1 for common charges as of 2017. However, since Great Bay is the owner of that unit, the lien is, effectively, a lien upon its own property.

CU-1 – and not the individual members of NA, that are subject to the Association’s liens, even in the case of a lien that is otherwise valid.

The Fourth Amendment recites that All Owners of Two Bedroom suites in this phase shall, in addition to being Members of the Condominium Association – Great Bay – be mandatory members of the Neighborhood Association, “whose contemplated sole initial purpose shall be to own and operate Commercial Unit CU-1...” It continues, “[n]ore particularly, and in accordance with the separate organization and governing documents of the Neighborhood Association, its members shall control the Neighborhood Association and shall be responsible for all costs and expenses related to the ownership, maintenance and operation of the Commercial Unit **owned by it...**” Great Bay has issued to NA’s members a memo purporting to justify its assessment upon them individually, of the dues for this Commercial Unit they do not own, by quoting this language -- until they reached the phrase “owned by it”, where their quote dropped back to flat text. Thus, in making this extortionate demand for payment of old dues for CU-1 upon individual NA members, Great Bay seeks to obscure the actual language of the Fourth Amendment which clearly indicated the members responsibility to make any contribution to dues for that unit was tied to and dependent upon ownership of CU-1 by NA. Once that ownership had been transferred by duly recorded deed from NA to Great Bay, there was no longer any cost or expense related to the ownership, maintenance or operation of any commercial unit “owned by it” for NA or its members, as there was no unit owned by NA at all from that point forward. This citation by Great Bay in its demand letter is, accordingly, at best deceptive, and in any event, legally wrong as a basis for the current assessment on NA members.

Finally, the same Fourth Amendment in referring to liens, states that **NA has a lien** on residences for its unpaid assessments and interest, together with related charges, and also that the

Two Bedroom Suites are subject to a “*lien in favor of the Neighborhood Association* to secure any unpaid assessments, fees or special charges imposed on members of the Neighborhood Association pursuant to the Bylaws of the [NA] which shall include but not be limited to interest, costs and attorneys fees incurred in the collection of a delinquent payment or enforcement of a lien. The Neighborhood Association lien shall be effective from and after recording a claim of lien in the Public Records...Such claims of lien shall be signed and verified by an officer of the Neighborhood Association, or by an authorized agent of the Neighborhood Association...” Here, too, it is plain that only NA has a lien on its members for non-payment of amounts NA assesses against or upon them. No superior or derivative lien in favor of Great Bay is reserved or in any way recognized in the Declaration, including this Fourth Amendment, upon which Great Bay relies.

B. THE THIRD AMENDMENT TO SUPPLEMENTARY DECLARATION.

Great Bay also justified its demand for payment and threat of lock-out, by citing selectively from the Third Amendment to the Supplementary Declaration of Condominium, including the requirement that NA members are also members of the Great Bay Condominium Association. That is not a point in dispute. The Third Amendment – like the Fourth Amendment to the Declaration quoted above -- provides that the 24 residences covered by this amendment shall “control” NA and be responsible for all costs and expenses related to the ownership and operation of the Commercial Unit **owned by it.**” Great Bay treats the language before this express limitation as if it meant the NA members were forever responsible for the costs of ownership and operation of the commercial unit, even at a time when NA no longer owned any such unit. The implication is that they would have an eternal obligation to pay the cost of operation, even if the unit were owned and operated by a third party. That interpretation is foreclosed by the phrase that concludes the



sentence – “owned by it”, ie, owned by NA. Any other interpretation would require that this significant phrase be erased from the document. Further, the Great Bay construction would leave the members of NA as eternally indentured to Great Bay for the cost of operating the lounge NA has not owned since 2017, no matter how many others may come to own it over future years. Such an interminable obligation, untethered from any ownership rights, is so preposterous as to defy consideration. See, e.g., *Restatement of Contract, Second*, §203.<sup>3</sup>

The Third Amendment also makes NA members subject to a lien “in favor of the Members Association for NA assessments, expressly providing that the lien is “in favor of the Neighborhood Association to secure any unpaid assessments, fees, or special charges imposed on members of the Neighborhood Association pursuant to the Bylaws of [NA]... Such claims of lien shall be signed and verified by an officer of the Neighborhood Association, or by an authorized agent of the Neighborhood Association...”. By this language, it is plain that the lien authorized by this amendment can only be issued by NA, and there is no authority to issue a lien for costs of operation or ownership of CU-1 in the hands of Great Bay.

Finally, there is a sentence cited by Great Bay in its memorandum to NA members, justifying its assessment, about priority of liens, but that sentence is not relevant to this “assessment”. The provision cited by Great Bay says that “[a]ll Neighborhood Association liens shall be subordinate to any Members Association lien and any mortgage recorded prior to the date of recording the claim of lien in favor of the [NA]...” This language merely provides that the individual owners who owe unpaid dues to Great Bay for their own residential units, are subject

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<sup>3</sup> “In the interpretation of a promise or agreement or a term thereof, the following standards of preference are generally applicable: (a) an interpretation which gives a reasonable, lawful and effective meaning to all the terms is preferred to an interpretation which leaves a part unreasonable, unlawful or of no effect...” Also, [i]f a contract or term thereof is unconscionable at the time the contract is made a court may refuse to enforce the contract, or may enforce the remainder of the contract without the unconscionable term, or may so limit the application of any unconscionable term as to avoid any unconscionable result. (id at §208.)

to a lien in favor of Great Bay to secure collection of its own, proper dues. If NA has a lien for its dues, and a residential unit owner is subject to both liens, the lien in favor of Great Bay will have priority over the latter. This clearly does not give Great Bay the power to impose liens upon NA members for amounts Great Bay is not entitled to collect from them. Here, Great Bay is trying to collect for disputed dues on CU-1, that NA has declined to pay. That effort is not supported by this language in the Third Amendment. Indeed, it gives no right to impose a lien upon NA members for this purpose at all, much less to grant such an invalid lien priority.

#### C. THE FIFTH AMENDMENT TO DECLARATION

Finally, Great Bay cites to NA members the Fifth Amendment to the Declaration, which added Building G to the Declaration, in essentially identical in language and purpose to the Fourth Amendment that added Building H. It plainly contemplates an obligation of owners of two bedroom suites in this building to be responsible for costs and expenses of ownership and operation of CU-1 *while that unit was owned by NA*, for the same reasons noted above.

Great Bay's argument that the individual responsibility of NA owners to share in the cost of operation and ownership of CU-1 is not tied to NA ownership of that unit, because the maintenance fees for owners were billed to NA for some period of time before the deed to the unit was "officially submitted", is not a convincing argument, because during that period NA had expenses of operation, including the GBCOA Assessments for CU-1, even as it awaited recording of its deed. Indeed, NA took possession before the deed was transferred, when it was discovered that the deed had not been filed.

#### D. VI CODE PROVISIONS

Title 28 Virgin Islands Code Section 909 expressly provides that "[t]he common profits of the property shall be distributed among, and *the common expenses shall be charged to, the*

*apartment owners according to the percentage of the undivided interest in the common areas and facilities.”* Those “undivided interests” are required to be the percentages expressed in the declaration. (Id at Section 905(a). Therefore, Great Bay is legally required to allocate the common expenses associated with CU-1 among all 1,260 owners who are members of Great Bay, in accord with their percentage interests in the common areas and facilities, as stated in the Declaration. In the alternative, as the owner of the unit, Great Bay is required to pay those assessments itself. It is not free to single out for discriminatory assessment only those 288 owners who are members of NA, the former owner of CU-1. This discriminatory and punitive action, imposed upon a minority of its owners, is legally prohibited by the VI code section cited.

For all of these reasons, there is no legal justification for Great Bay to impose these massive assessments upon NA’s owners, in defiance of the actual terms of the Condominium Declaration as amended, the statutory law of the Virgin Islands, and the proper jurisdiction of this court over the matters in dispute. That the demand is coupled with an express or implied threat to lock out the NA owners from the use of their own residences and the other amenities their ownership in the Association promises, is utterly reprehensible.

**II. NA IS ENTITLED TO A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION.**

In moving for a temporary restraining order and preliminary injunction<sup>4</sup> pursuant to V.I. R. Civ. P. 65, NA must show: “(1) a likelihood of success on the merits; (2) that it will suffer irreparable harm if the injunction is denied; (3) that granting preliminary relief will not result in even greater harm to the nonmoving party; and (4) that the public interest favors such relief.”

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<sup>4</sup> “When considering a motion for a temporary restraining order, the Court essentially applies the same test it would utilize if it were considering a request for a preliminary injunction.” *Turnbull v. Parker*, No. ST-11-CV-429, 2011 WL 4703040, at \*1-2 (V.I. Super. July 20, 2011) (citation omitted).

*Hansen v. Virgin Islands Water & Power Auth.*, No. SX-11-CV-356, 2011 WL 3841584, at \*1 (V.I. Super. Aug. 12, 2011) (citations omitted). As more fully set forth herein, NA satisfies each of these four requirements,<sup>5</sup> and it is clearly entitled to a temporary restraining order and preliminary injunction restraining and enjoining Great Bay from assessing the disputed dues upon NA members, or locking out NA members from their condominiums, the resort amenities, or the full Ritz-Carlton Club rights and amenities, or from threatening or implementing any recording of lien on NA members' personal residences at the Ritz-Carlton Vacation Club, pending a hearing on the merits. *See also* V. I. Civ. P. 65 (b)(1)(A)-(B) (a temporary restraining order may be issued without notice to the adverse party if the specific facts in an affidavit "clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition," and the "movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required").

*a. NA has a reasonable probability of success in the litigation.*

To show a reasonable probability of success on the merits, NA does "not need to show that [it] will actually prevail on the merits at trial, or that [it's] success is 'more likely than not,' only

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<sup>5</sup> NA acknowledges that the "Superior Court has not uniformly applied a standard for interpreting the four preliminary injunction factors," with some cases employing a "sequential injunction test" in which the moving party must fully satisfy each of the four factors, while other cases use a "sliding-scale test," balancing each of the four factors. *SBRMCOA, LLC v. Morehouse Real Estate Investments, LLC*, No. ST-14-CV-138, 2015 WL 1206119, at \*5 (V.I. Super. Mar. 12, 2015) (performing *Banks* analysis, "recognizing there may be situations where the balance of the equities favors injunctive relief even where one factor has not been proven," and applying a "hybrid" variation of the sliding-scale test). Here, however, the Association "fully satisf[ies] each of the four factors," and this Court therefore "need not dwell on which test is applicable." *See Police Benevolent Ass'n v. Gov't of Virgin Islands*, No. ST-14-CV-490, 2014 WL 7532265, at \*5 (V.I. Super. Dec. 29, 2014) (acknowledging that the "Supreme Court of the Virgin Islands has yet to opine on whether this is 'a sequential injunction test,' where all four factors must be satisfied in full, or a 'sliding-scale test,' where the four factors are balanced and weighed," but finding that because the plaintiff could "satisfy the more stringent 'sequential injunction test,' we need not dwell on which test is applicable") (citations omitted).

that [it] has ‘a reasonable chance, or probability, of winning.’” *Yusuf v. Hamed*, No. S.CT.CIV. 2013-0040, 2013 WL 5429498, at \*4 (V.I. Sept. 30, 2013) (citation omitted). “In order to do this, [NA] must introduce evidence supporting each element of [it’s] cause of action.” *Id.* (citation omitted).

Here, NA plainly has more than “a reasonable chance” of prevailing on the merits. The Condominium Declaration and its amendments are clear and unambiguous. Only the owner of a unit is subject to an obligation to pay common charges. The very issue of the identity of the owner of this unit is put in question by the Plaintiff’s suit, but record title is plainly in Great Bay. Further, the Fourth Amendment to the Declaration, cited above, expressly gave NA the power to convey title to CU-1 to Great Bay, without the need to obtain the latter’s consent. In any case, there is no theory under which NA members could be found to be the “owner” of the Unit. Even if, at the conclusion of the case, the Court were to conclude that the Plaintiff should prevail on any of its claims, that would only make NA the “owner” of the Unit – not its members. Further, Great Bay has the burden of proof in the pending suit on all of its claims, and it has no credible basis to expect to prevail, in light of the undisputed fact that record title to the Unit was transferred to Great Bay years ago, and that no consent from Great Bay to this transfer was required under the governing condominium documents. Indeed, Great Bay takes the bizarre position that NA’s members are responsible for the dues on this unit they do not own in perpetuity, no matter who may own that unit in the future.

Thus, because Great Bay has not established any right to relief on its claims that NA should be adjudged the owner of the unit it deeded to Great Bay in compliance with the Declaration, it is reasonable to conclude that NA has at least a reasonable chance to prevail on the merits of the suit, and based upon the detailed analysis of the governing condominium documents outlined here,

Great Bay has no lawful basis to assess individual NA members for the costs of owning or operating CU-1.

Further, by statute, common charges must be assessed among all owners in proportion to their share of the common areas. No right to single out a minority of owners for a punitive assessment exists in either the Declaration or the VI Code. Thus, if CU-1 is not to be subject to assessment of common charges against its actual owner, it must be a common area in which case any assessment would have to be made against all Great Bay owners in proportion to their ownership shares.

In summary, NA has established by affidavit that Great Bay is engaged in extortionate conduct, under threat of enforcement by lockout and other highly punitive measures, to force NA members to pay a debt no court has held is their obligation. Great Bay has shockingly taken this action even as it knows this Court has made no ruling in its favor on the claims on which, as plaintiff, it bears the burden of proof. Accordingly, NA is likely to succeed on the merits of the suit, but very likely to succeed on the merits of this motion, demonstrating that Great Bay lacks the authority to impose the retroactive assessment for years gone by on NA's members, who are not and never were the owner of the Unit. Thus, Great Bay must be enjoined from imposing the threatened assessments and from implementing any enforcement of the invalid assessments by recording of lien on the personal residence, or otherwise.

*b. NA and its members will suffer irreparable harm if the injunction is denied.*

“In order for a moving party to satisfy its burden of showing irreparable harm, it must demonstrate ‘clear showing of immediate irreparable injury, or a presently existing actual threat.’” *Hansen*, 2011 WL 3841584, at \*1. “Additionally, the harm must be ‘imminent.’ It must not be speculative and cannot ‘occur in some indefinite future.’” *Id.* (citations omitted). Furthermore, the

“nature of the harm must be such that money damages alone cannot atone for it.” *Id.* (citations omitted).

NA and its owners have been, and will continue to be, irreparably injured and damaged by the conduct of Great Bay, in purporting to assess these massive, retroactive dues, coupled with a threat of enforcement by lockout, recording of liens, and other measures, if the sums are not paid by November 22. Violation of their rights under the Condominium Declaration that governs the use of their property inflicts irreparable harm. The invalid assessments, alone, cause irreparable harm to the credit and peace of mind of NA’s members. This, coupled with the rapidly approaching deadline for payment upon threat of enforcement involving lockout from their individual residences, are plainly causing irreparable harm. A lien recorded against a Member’s personal condominium would potentially threaten a pending sale or mortgage, requiring clear title, also constituting irreparable harm. With the Great Bay threat hanging over them, NA and its members are being subjected to intolerable and totally irreparable harm. All of these matters are threatened to take place if NA members do not capitulate to the threat by November 22 – a matter of days from now. (See Affidavit of Salvatore Cutrona, attached as Exhibit 1)

Plainly, this harm is the type of harm “for which a monetary award does not adequately compensate.” *SBRMCOA, LLC v. Morehouse Real Estate Investments, LLC*, No. ST-14-CV-138, 2015 WL 1206119, at \*9 (V.I. Super. Mar. 12, 2015) (citation omitted). Most significantly, the irreparable harm is not “speculative” or occurring “in some indefinite future,” but is currently occurring, as Great Bay has already issued its invoices and demand for payment by November 22. It has refused a written demand to rescind that. Accordingly, NA and its members are suffering, and will undoubtedly continue to suffer, irreparable harm if the requested injunctive relief is denied.

c. *Granting preliminary relief will not result in even greater harm to Great Bay.*

“In deciding whether granting preliminary relief will result in even greater harm to the nonmoving party, the court determines whether, and to what extent...the nonmoving parties will suffer irreparable harm if the preliminary injunction is issued.” *SBRMCOA, LLC*, 2015 WL 1206119, at \*9 (internal citation, brackets, and quotation marks omitted). Should the Court grant the relief sought by NA, Great Bay will simply be required to cease efforts to extract the disputed assessments and await the ruling of this Court on the pending claims in its suit. If it prevails, and NA is adjudged the owner of the unit, NA will be required to respond to demands for dues. If, as NA subjects is far more likely, Great Bay does not prevail in this suit, it will have suffered no harm at all, as it will be required to treat the dues for CU-1 as its own obligation as owner of that unit. This clearly does not constitute “irreparable harm” to Great Bay.

“[T]he most compelling reason in favor of entering [an injunction] is the need to prevent the judicial process from being rendered futile by defendant’s action or refusal to act.” *Pate v. Gov’t of the Virgin Islands*, No. ST-14-CV-479, 2014 WL 7188999, at \*4 (V.I. Super. Dec. 11, 2014), *citing* 11A Wright, A. Miller, & M. Kane, § 2947. Accordingly, “the court considers whether the injunction would destroy the status quo, as one of the goals of the preliminary injunction analysis is to maintain the status quo, defined as the last, peaceable, noncontested status of the parties.” *SBRMCOA, LLC*, 2015 WL 1206119, at \*9 (internal citation, brackets, and quotation marks omitted). Here, “the last, peaceable, noncontested status of the parties” occurred before Great Bay commenced the improper assessment of dues for CU-1 on NA individual members, coupled with threat of lockout, recording of liens on personal residences, and other punitive measures, in case of non-payment. It is notable that Great Bay did not commence the billing and threats to NA members for years after the deed to CU-1 was recorded, and while this



litigation it filed was pending. Rather, Great Bay originally sought a determination by this court on ownership of the unit, and while it did purport to bill NA on occasion for dues for that unit, NA promptly and firmly objected, leaving the determination of the outcome of this dispute to the Court, where it belongs.

As Great Bay has now elected to proceed with a plan of self-help, wrongful assessments on innocent individual residence owners who are members of NA, and the saber-rattling of threats of lockout and other punitive measures in case their demands are defied, NA is forced to come to the Court for protection of its members from this scheme. Accordingly, this factor should weigh heavily in favor of granting the injunctive relief requested by NA.

*d. The public interest favors granting the requested injunctive relief.*

Pursuant to the Condominium Act, it is well-settled that condominium owners “shall comply strictly with the bylaws and the administrative rules and regulations adopted pursuant thereto...” 28 V.I.C. § 906. Other unit owners within Great Bay, and condominium owners throughout this jurisdiction, have a substantial interest in the strict enforcement of the Condominium Declarations, bylaws and rules and regulations of such condominium associations. This includes limiting the responsibility of condominium owners to the obligation to pay dues or common charges for units they own. Permitting Great Bay to continue unlawful and improper assessment of dues to NA members for CU-1, with the related threats being made, throughout the pendency of this litigation, does not further that interest. Moreover, Section 923 provides that in the case of voluntary conveyance, a grantee is jointly and severally liable with the grantor for “his share of the common expenses up to the time of the grant or conveyance..” It follows that the grantee is solely liable for common expenses after the time of the grant or conveyance. Here, the

position of Great Bay is directly contrary to Virgin Islands statutory law on this point. Accordingly, the public interest clearly favors granting the requested injunctive relief.

### **III. CONCLUSION**

NA has demonstrated that (1) there is a reasonable probability of eventual success in this litigation; (2) if injunctive relief is denied, NA and its members will suffer irreparable harm; (3) the harm to Great Bay is not outweighed by the harm to NA and its members; and (4) the public interest favors injunctive relief in this case. NA has established by affidavit that notice of intent to seek a temporary restraining order was given to Great Bay. Hodge Aff. ¶3. Accordingly, NA respectfully submits that entry of a temporary restraining order is therefore warranted. In the alternative, NA has plainly satisfied each of the requirements for imposition of a preliminary injunction, and respectfully requests that the Court enter the same.

DATED: November 12, 2021

RESPECTFULLY SUBMITTED,

/s/ Maria T. Hodge  
HODGE & HODGE  
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maria@hodgelawvi.com

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 12h day of November, 2021, a true and correct copy of the foregoing was served via the Court's electronic filing system, upon:

W. Mark Wilczynski, Esq.  
Law Offices of W. Mark Wilczynski, P.C.  
Palm Passage, Suite C20-22  
P.O. Box 1150  
St. Thomas, VI 00804-1150  
Email: [mwilczynski@usvilaw.com](mailto:mwilczynski@usvilaw.com)  
*Counsel for Plaintiff*

/s/ Maria T. Hodge \_\_\_\_\_

**FILED**

November 12, 2021 02:26 PM  
ST-2018-CV-00768  
TAMARA CHARLES  
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

_____	)	
GREAT BAY CONDOMINIUM OWNERS	)	
ASSOCIATION, INC.	)	CIVIL NO. ST-18-CV-768
	)	
PLAINTIFF,	)	ACTION FOR DECLARATORY
V.	)	JUDGMENT, TO CANCEL DEED
	)	AND TO QUIET TITLE
THE NEIGHBORHOOD ASSOCIATION, INC.	)	
	)	
_____	)	
DEFENDANT.	)	

**AFFIDAVIT OF SALVATORE M. CUTRONA, SR. IN SUPPORT OF MOTION FOR  
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

I, Salvatore M. Cutrona, Sr., first being duly sworn, depose and state the following:

1. I am an adult resident of Mohnton, Pennsylvania, and I am competent to make this Affidavit.
2. I am the President of The Neighborhood Association, Inc. (hereinafter "Defendant" or "NA") Defendant in the above-captioned matter, and I have personal knowledge of the matters set forth in this Affidavit. I have served on the NA Board (a 288 member not-for-profit organization established to manage the food and beverage operation of a commercial unit (CU-1) for the suite interest owners of the master home-owners association) and the Great Bay Condominium Owners Association, Inc. ("Great Bay" or "Plaintiff") (a 1,260 member organization that includes the 288 suite interest owners), on whose Board I served from 2002 through 2010 with the last six years as their President.
3. I am authorized to make this Affidavit on behalf of the Defendant.
4. Prior to my involvement in these Boards, I was a partner in the international accounting firm of Arthur Andersen & Co., and I then worked on creating a worldwide management

and information consulting firm, “Accenture”, which is a publicly traded multi-national professional services firm that specializes in IT services and consulting. [A Fortune Global 500 company, it reported revenues of \$44.33 billion in 2020 and has over 569,000 employees worldwide.]

5. NA seeks a temporary restraining order and preliminary injunction against Plaintiff, Great Bay Condominium Owners Association, Inc. to enjoin Great Bay from invoicing and demanding payment from our individual members for years of retroactive GBCOA assessments for a Commercial Unit (“CU-1”), which is the subject of this litigation, filed by Great Bay against NA, seeking a declaration that our deed transferred to Great Bay and duly recorded is somehow not valid and that Great Bay is not the lawful owner of CU-1.

6. Despite the pendency of this suit brought by Great Bay, which seeks a declaration from the court on ownership of CU-1, Great Bay has after four years suddenly on October 22, 2021 improperly issued invoices to all NA members just shy of a million dollars (gross), demanding that they pay these allegedly delinquent dues for that Unit, well knowing that none of our members owns or has ever owned CU-1, and that title to that commercial unit remains, as it was when the suit was commenced, in Great Bay itself.

7. Attached hereto as Exhibit A is a true copy of a representative invoice sent by Great Bay to the undersigned, demanding that I, as an individual member of NA owning one suite-interest, personally pay thousands of dollars for these contested dues for CU-1, which Great Bay seeks to collect from me for my ownership interest in a separate condominium at GBCOA (unit #5401 interest #10). Upon information and belief, and due inquiry, a similar invoice was sent to every member of NA with a similar demand.

8. The Great Bay invoice to me and the other NA members demand payment by November 22, 2021, failing which we are threatened with being “*locked out*” of our own residential

condominiums for “non-payment” of dues, even though the dues they seek are unrelated to our individual residential condominiums.

9. The GBCOA letter dated 10-22-21 to NA Members attached hereto as Exhibit B, which included the GBCOA assessment billing dated 10-20-21 for CU-1 assessments for the period 2017 through 2021 stated: *“If the invoice is not paid in full within 30 days the Members Association (GBCOA) will take further actions as provided for in the Declaration.”*

10. In addition, the footnote on the fourth page of the GBCOA’s billing transmittal letter attached herein as Exhibit B, provides a reference to the *Members Website*, where members can find the *Declarations*, the *Supplementary Declarations* and all *Amendments* thereto, that include very specific details related to the ownership and access privileges and the benefits of the Ritz-Carlton Destination Club, including the Ritz-Carlton Club, *Sixth Amendment To Supplementary Declaration - Article VI, Subsection 6.4* covers the *Membership Program*, including liens for assessments, personal liability for unpaid assessments; *Article XI-Section 11.1 Use Restrictions; Section 11.4 Rights. Of Occupancy of Residence Holdovers, Section 11.7 Additional Use of Residence Interests* addresses and refers to the *“Affiliation Agreement”* and the *Sixth Amendment to the Supplementary Declaration* addresses the Association’s privilege to rent delinquent member’s time in their condos; the *Seventh Amendment and Restated Reservation Procedure* addresses in *Article III – A4 the “Club System Exchange;* and *Article 11* addresses *Suspension of Membership Privileges, Cancellation of Existing Reservations and Use of Cancelled Allocation Including Rental By The Members Association, the Suspension of all Membership Privileges, the Cancellation of Existing Reservations, and the Use by the Association of Cancelled Allocation.* All of these benefits and privileges of NA members are directly threatened by the Great Bay assessment upon them for CU-1, despite the fact that they do not own that commercial unit.

11. Attached hereto as Exhibit C is a notice issued by the Ritz-Carlton Club, St. Thomas which manages the billing and collections for Great Bay, formally notifying all owners that failure to pay their assessments as invoiced within the time stated will result in us being “locked out” of our units in case of “delinquent balances” after 10 days, which expressly states that under the Condominium Documents they claim the right to “lock-out” Members from all of the Ritz-Carlton Destination Clubs, including their home club in St. Thomas” – in which NA members have rights of membership – and specifies that this “lock out” “includes no access to “reserved allocation” – contractual calendar days of occupancy that rotate annually as defined in the Declarations of the condominium - or “space available” – discounted unreserved days available that an owner can purchase based on availability - reservations at any Destination club.” The notice on page 2 of this memo specifically warns that *“If you do not timely make payment of all amounts due and owing for common charges, the “lock out” will be implemented and shall remain in place until all amounts due and owing, including interest and late charges, are paid in full.”* (Id)

12. Attached hereto as Exhibit D is a brochure issued by the Ritz-Carlton Destination Club describing the various rights and amenities that belong to Club members, including NA members, by virtue of their ownership of residential condominium - two-bedroom suite residence - at the Ritz-Carlton Club, St. Thomas. All of the rights and amenities described in Exhibit D are rights and amenities that Great Bay has threatened to terminate for NA members if they do not pay the disputed assessments for CU-1 by November 22, 2021, the date demanded.

13. I have a week in March 2022 reserved for the winner of a philanthropic “*A Week at the Ritz-Carlton Club St. Thomas Raffle Ticket*” that my wife and I donated a key “spring-break” March 2022 week in our residence to a charity - a school for autistic children and adults in Pennsylvania that we support - who raised over \$20,000 (200 tickets for \$100 a piece). [The school

teaches primary and secondary autistic students and has an adult program.] The winner is a very kind financial advisor, who intends to pay it forward to an autistic school here in St. Thomas. I never met him before. Their children from previous marriages are going to stay with them here on island in our condo. Their siblings are coming down too. The bride's elderly mother and sisters are also attending the wedding. If Great Bay is permitted to enforce its unilateral assessment on my unit for these retroactive dues for CU-1, I would be left with the impossible task of explaining to them and their invited guests that the promised condominium is suddenly not available, because we are "locked out". I can only imagine how this would impact the charity. In addition to donating the use of our condominium to this charitable cause, we also included the couples' direct flights and boating reservations, all of which were part of the raffle award. And, of course, their wedding plans are booked. No amount of money could remedy the harm or make this right!

14. Great Bay sent these invoices like Exhibit A, to me and the other NA members, with a memorandum purporting to explain the basis for their demand, citing various provisions in the "*Declaration of Great Bay Condominium Owners Association -May 10, 2002*" , the seven "*Amendments*" thereto dated from 2002 to 2014 , and the "*Supplementary Declaration – April 11, 2002*" and the seven "*Amendments*" thereto dated from 2002 to 2014, along with the "*Affiliation Agreement*" dated April 11, 2002 as amended. A copy of Great Bay's memorandum to NA members containing this "explanation" is attached as Exhibit B.

15. I have weeks rented and under contract, as many other NA owners have. Great Bay's threatened actions, if not restrained, would leave me and the other NA owners, with no recourse. The economics and penalties are outrageous, if we must cancel all of these reservations.

16. The Ritz-Carlton Club, St. Thomas has been in existence since 2002 with two-and-three-bedroom residences. The suites were added to the Condominium through the *Fourth*



*Amendment to the Declaration on 11-15-2005.* Now in 2021, many of our members' lifestyles have changed. Their kids are grown up. And they themselves require more assistance than they like to admit or identify with. Some have sold their units pending settlements and recording of deeds. Others are in desperate situations, where they need to sell to close on retirement community homes, assisted living facility contracts, and other types of senior living arrangements. The liens that Great Bay has suddenly imposed upon their units would make closing any pending sale impossible.

17. In one particularly egregious example of the impact of this combination of the improper Great Bay assessment with the threat of enforcement by punitive measures, one of our members has advised the NA Board just recently on November 10, 2021, that she is 75 years of age caring for her husband suffering from Alzheimer's who is now on Hospice, and that the emotional stress of this assessment, coupled with the threatened enforcement, the possible personal litigation, and the looming due date of November 22, 2021 forced her to pay the full amount demanded, even though she felt it was wrong to be so assessed

18. Our calendar of time is reserved 16 months prior to the first day of the use period. Many NA owners have plans to use their confirmed "reserved allocation" days, and they have booked air and other travel related reservations with family and friends either at sister clubs in the Ritz-Carlton Destination Club, the Marriott Vacation Club, or other exchange enterprises, including Third Home, Lion & Crown, or the Ritz-Carlton Hotel. All of these reservations are associated with significant cancellation costs. If Great Bay is permitted to enforce its invoices and threatened enforcement by liens and "lock-outs," our members would clearly suffer harm that cannot be measured in money, and that could not be compensated fully with an award of damages.

19. The basis for the assessments rendered by Great Bay, said to be founded on the original Declaration and its amendments, actually distorts and intentionally misconstrues the



condominium documents, to create a pretense that the assessments are valid, as more fully set forth in the section of our memorandum of law in support of the motion for temporary restraining order titled "Relevant Factual Background", which quotes the specific language from each section of the condominium documents relied upon by Great Bay to demonstrate the false and erroneous nature of the Great Bay's claims

20. In fact, upon review of the Great Bay memorandum to NA owners (Exhibit B) by our legal counsel, it was confirmed that the basis stated was pretextual and that the documents, in fact, did not allow Great Bay to assess individual NA members for these "dues".

21. As set forth in the memorandum of law supporting this motion, our legal counsel set forth the actual language of the documents demonstrating that there was no right in Great Bay, created by the Declaration as amended and supplemented to impose or collect these assessments from NA members.

22. Attached to this affidavit as Exhibits E, Exhibit F, and Exhibit G are true and correct copies of the Condominium Declaration Amendments cited in the Memorandum in support of the current motion for a temporary restraining order and preliminary injunction, which confirm that Great Bay has no legal right to implement the discriminatory assessment of these "dues" or common charges for CU-1, solely and directly upon NA members, rather than upon itself, as the Owner of CU-1, or upon all Great Bay members as common charges allocated in accord with the VI Code.

23. At our request, our attorney made a formal demand attached herein as Exhibit H upon Great Bay to withdraw the assessments and the memorandum, but they refused to do so, instead threatening our board with various legal actions.



24. At present, I and all other members of NA face the threat of complying with the demand for payment of dues for CU-1, which we do not own, to Great Bay, or potentially being “locked out” of our own residential units. Many members schedule use of their condominiums during the holiday season – including Thanksgiving, Hanukkah, Christmas, Winter Break, Spring Break - and the deadline fixed by Great Bay for payment of this demand puts such owners in the impossible position of conceding to the wrongful demand or losing the opportunity to use and occupy their own condominium for family gatherings, weddings, holidays, school ‘breaks”, and the holidays, etc., with family and friends.

25. In fact, many NA members have their condos under Rental Agreements with significant penalties if they cannot deliver on them.

26. Upon information and belief, other NA members have their condominiums under Sales Agreements pending recording of deeds.

27. Upon information and belief, others have their condominiums listed for sale, and such legal actions and billings are deterrents in the marketplace preventing them from even selling their units.

28. Great Bay had previously caused a demand for payment of these dues for the years from the end of 2017 after the hurricanes through 2018, 2019, 2020 and 2021 to be sent to NA, and NA objected in writing at that time on each one, explaining why the demand was improper. Attached as Exhibit I is an example of such an objection, dated November 28, 2017 re: Conveyance of Title to Unit CU-1 by NA to GBCOA consisting of our counsel’s letter, which we authorized to be sent on our behalf in response to the first of those earlier Great Bay efforts at wrongful assessment of these same dues on NA, before they adopted their current strategy of assessing our members, individually for those same dues. Similar letters were sent on our behalf yearly to object



to the Great Bay assessments upon NA for dues for the following years, which Great Bay now claims the right to impose upon and collect from our members, individually.

29. Because the Great Bay case against NA has not yet been decided, it appears that GBCOA has decided to resort to self-help to forcibly collect monies they seek, without having demonstrated any right to those payments.

30. NA and its members have been, and will continue to be, irreparably injured and damaged by the collection of dues for CU-1 from NA members, with the threat of "lockout", liens, egregious interest and other punishments and penalties, as enforcement mechanisms, as we will be forced to choose between paying large sums of money we do not owe or being "locked out" of our own residences if we elect to refuse such payment.

31. Upon information, belief, actual observation, and attendance at several GBCOA sponsored special dinners and events held in CU-1 (*Grand Palazzo Club*), Great Bay has been using the lounge at CU-1 for its own purposes and benefits, including holding GBCOA Board meetings and GBCOA special events with outside chefs being contracted for select five course dinners, wine and drink pairing dinners, and cocktail type events, all consistent with its actual identity as owner of the Commercial Unit.

32. In addition, every year since the CU-1 deed was delivered and recorded after Irma and Maria hit the islands, GBCOA has refused to honor suites owners' requests, especially those of the NA Board, to use the GBCOA common areas, such as the Members' Lounge, the Members' Reception Building, and other common area spaces to facilitate our NA Special Member Meetings, the NA Annual Members' meeting, etc., causing us to rent space at the contiguous Ritz-Carlton Hotel property in St. Thomas.



33. Since transferring the CU-1 title in 2017 to Great Bay, Great Bay has expressly denied NA the right to conduct NA Board or NA Board Committee meetings on site in the CU-1 lounge or any other part of the Ritz-Carlton Club, St. Thomas forcing NA instead, to conduct its meetings remotely, stateside, or now via Zoom, again consistent with Great Bay acting as the sole and exclusive owner of the commercial unit consistently.

34. Upon information and belief, Great Bay has sought and obtained payment of Business interruption insurance proceeds related to CU-1, following the 2017 hurricanes and without notice to NA, GBCOA took those funds for its own benefit by depositing them into their operating fund as a payment on delinquent invoices noted above, again acting consistent with their actual identity as the owner of record of CU-1. Upon information and belief, these insurance proceeds for CU-1 were directly deposited to Great Bay funds.

35. Great Bay's argument in the memorandum it sent to NA members on October 22, 2021 in Exhibit B, along with its improper invoice in Exhibit A, claimed that it did not matter whether or not they won or lost their suit, as they claimed the right to force individual NA members to pay the dues for that unit in perpetuity, without regard to the identity of the owner of CU-1. This position, as presented in the Great Bay memorandum above is totally inconsistent with the actual provisions of the governing *Condominium Declaration* and its amendments and the *Condominiums Supplementary Declaration* and related amendments.

36. This Affidavit is executed solely for the purpose of obtaining a temporary restraining order and preliminary injunction against Great Bay in the above-captioned matter.

In accord with Rule 18 of the Rules of the Superior Court of the Virgin Islands, I declare under penalty of perjury under the laws of the United States Virgin Islands that the foregoing is true and correct.

EXECUTED ON November 12, 2021

*SmCutrona*

SALVATORE M. CUTRONA, SR.

Great Bay Condominium Owners Association, Inc  
6910 Great Bay  
St. Thomas, USVI 00802

**GREAT BAY CONDOMINIUM OWNERS**

10/20/2021

You may contact us at 1-800-451-0755 or for calls  
outside the U.S. call 480-684-1779.  
To pay online visit: [www.myaccountinfo.com](http://www.myaccountinfo.com)

Account #: 77650310706  
Unit: 5401  
Interest: 10



RITZ.STMT.002.MAINT ▲ - 0 0 0 0 4 2 B5  
Salvatore Cutrona  
2621 WELSH ROAD  
MOHNTON PA 19540

Opening Balance:	\$0.00
Maintenance Fee CU-1 For Billing Periods from 2017 to 2021 Please see enclosed letter for additional information	\$2,635.77
Late Fee	\$402.87 ✓
Interest	\$493.63 ✓
<b>Grand Total:</b>	<b>\$3,532.27</b>

**IF RECEIVED BEFORE 11/9/2021 50% OF THE  
LATE FEE AND INTEREST WILL BE WAIVED**

**DUE DATE** 11/22/2021

\*Interest (lower of 9% or the highlighted rate permitted by law) will be assessed on any unpaid Maintenance Fee balance.  
TEN (10) days after the November 22, 2021 Due Date.  
\*When paying online, use the Account Number/s listed above. the payment password  
is different from your Ritz-Carlton Destination Club membership password. Select  
Forgot Your Password if you need to reset the password.  
\*Please mail this lower portion with your payment. Be sure to write your Account Number/s on the check. Do not staple  
or use paper clips. If mailing your payment, please allow sufficient time to ensure receipt by the desired date.

Please mail this lower portion with your payment. Be sure to write your account number on your check. Do not staple or use paper clips.

**REMITTANCE INFORMATION**

GREAT BAY CONDOMINIUM OWNERS  
ASSOCIATION, INC  
PO Box 150  
Scottsdale, AZ 85252

Account Number	Statement Date
77650310706	10/20/2021
Due Date	Amount Enclosed
11/22/2021	

Statement For:

Please Remit Payment in U.S. Dollars To:

Salvatore Cutrona  
2621 WELSH ROAD  
MOHNTON, PA 19540

GREAT BAY CONDOMINIUM OWNERS  
ASSOCIATION, INC  
PO BOX 29352  
PHOENIX, AZ 85038-9252

1210002480497314178100477583030035327861062116 **EXHIBIT A**

**A.000040**

Statement Page 2

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***Continue to next page for cover letter and budget.***

EXHIBIT A

A.000041





6910 Great Bay, St. Thomas, USVI 00802

BoardStThomas@aol.com

1-340-715-9042



October 22, 2021

TO: All Owners of Residence Interests in Heliconia and Gardenia Buildings

Re: Invoice for Unpaid Maintenance Assessments 2017 through 2021

As you may know there has been an ongoing dispute with the Board of the Neighborhood Association (NA) regarding the purported conveyance of the Commercial Unit-1 ("CU-1") located on the Fifth Floor of the Gardenia Building. Despite GBCOA's best efforts to resolve the dispute and related litigation, intransigence by NA's Board has frustrated and prevented any resolution. The Management Company, which has intractable conflicts of interest as the managing entity for both GBCOA and NA, has been unable to facilitate a resolution.

In the meantime, the annual maintenance fee assessments relating to CU-1 for 2017 through 2021 remain unpaid. These assessments, including Late Fees and Interest as provided for in the Declarations, total nearly \$1 million.

CU-1's delinquent status has created a substantial financial burden on GBCOA's finances that we, as the governing Association for all Members, can no longer allow to go unaddressed. The purpose of this communication is to advise you that, as set forth in the governing Declarations for the Club at Great Bay Condominium, the Suites Owners remain personally responsible for payment of all dues on CU-1. Accordingly, enclosed is an invoice reflecting your proportionate share of delinquent assessments for CU-1 including Late Fees and Interest for 2017 through 2021.

Responsibility for payment of all assessments relating to CU-1 was established in the Amendments to the Declarations that RC Hotels (Virgin Islands), Inc. (hereinafter "Ritz-Carlton") filed when it submitted the Heliconia and Gardenia buildings to the Club in 2006. At that time, CU-1 was known as the Suites Lounge. Its purpose was to provide food and beverage services exclusively to the owners and occupants of the Suites in the Heliconia and Gardenia buildings.

From 2006 through 2016, the Suites Owners, through NA, were invoiced for all annual assessments relating to CU-1. In 2014, the NA Board closed the Suites Lounge and converted it to a restaurant, the Grand Palazzo Club (GPC). The GBCOA Board consented to this change and to assist, waived the CU-1 dues for the first year of operation and waived 50% of the dues in the following two years in exchange for access to the GPC for all GBCOA Members. The Suites Owners continued to be invoiced for all dues not waived by GBCOA for CU-1.

As we previously advised in our December 19, 2018 communication to all GBCOA Members, within days after the Club was devastated by Hurricanes Irma and Maria in September 2017, NA's Board unilaterally attempted to transfer the Deed for CU-1 to GBCOA. The purpose, of course, was to attempt to transfer the financial burden of paying dues on CU-1 from the Suites Owners to all GBCOA Members. We promptly rejected the purported transfer and filed suit against NA in the Superior Courts of the Virgin Islands, which litigation remains ongoing.

It is the GBCOA Board's position that regardless of whether NA's attempted transfer of the Deed to CU-1 was legally effective, the Suites Owners remain personally responsible for all dues relating to CU-1. More particularly, the Fourth Amendment to the Condominium Declarations, which Ritz-Carlton executed and recorded when it submitted the Heliconia building to the Club in December 2005, clearly provides the Suites Owners are *exclusively responsible* for all assessments relating to CU-1; NA is merely the conduit for invoicing and collecting the assessments:

*All Owners of Residences* that are designated as a Two Bedroom Suite in Phase 5 or Phase 6 shall, in addition to being Members of the Condominium Association, be mandatory members of the Neighborhood Association whose contemplated sole initial purpose shall be to own and operate Commercial Unit CU-1, anticipated to be created in Phase 6, and which may provide certain food and beverage services for the exclusive benefit of the occupants from time to time of the Two Bedroom Suites, whether or not such occupants are Members of the Neighborhood Association. More particularly, and in accordance with the separate organizational and governing documents of the Neighborhood Association, *its members* shall control the Neighborhood Association and be *responsible for all costs and expenses related to the ownership, maintenance and operation of the Commercial Unit* owned by it, including but not limited to any services that it may elect to provide.

Another amendment to the Declarations filed the same day, titled Third Amendment to the Supplementary Declaration of Condominium for the Club at Great Bay Condominium (hereafter "Club Declaration"), submitted the Residence Interests (Suites) in the Heliconia Building to the interval form of ownership. That document likewise declares the Suites Owners solely responsible for all costs and expenses of CU-1 and, moreover, creates a "stacking" of liens for unpaid CU-1 dues. The lien created in favor of NA is *subordinate* to the lien created in favor of GBCOA:

*In addition to the lien in favor of the Members Association against each Residence or Residence Interest, as applicable, for any unpaid assessments and for interest accruing thereon, together with related charges, as set forth in the Declaration, all Owners of Residences that are designated as a Two Bedroom Suite shall, in addition, be subject to a lien in favor of the Neighborhood Association to secure any unpaid assessments, fees or special charges imposed on members of the Neighborhood Association ... All Neighborhood Association liens shall be subordinate to any Members Association lien ...*

In July 2006, when Ritz-Carlton submitted the Gardenia building and Suites Lounge to the Club, it filed the Fifth Amendment to the Condominium Declaration. Paragraph 5 of that Amendment expressly reaffirms the Suites Owners' exclusive financial responsibility for CU-1, whether or not NA's Board decides to operate it or provide any food or beverage services to the Suites Owners:

*All Owners of Residences* that are designated as a Two Bedroom Suite shall, in addition to being Members of the Condominium Association, be mandatory members of the Neighborhood Association whose sole purpose is to own and operate Commercial Unit CU-1, which shall be conveyed by Declarant to the Neighborhood Association and utilized for the exclusive benefit of the occupants from time to time of the Two Bedroom Suites, whether or not such occupants are Members of the Neighborhood Association, and as more particularly described in the organizational and governing documents of the Neighborhood Association. As a member of the Neighborhood Association, *Owners of Two Bedroom Suites are responsible for all costs and expenses of the ownership and operation of Commercial Unit CU-1*, including but not limited to any services that it may elect to provide.

On the same date, Ritz-Carlton filed the Fourth Amendment to the Club Declaration, which similarly declares the Suites Owners responsible for payment of all dues relating to CU-1 and provides a lien in favor of GBCOA for all such unpaid dues:

The twelve (12) Residences which are the subject of this amendment are Two Bedroom Suites and, as such, all Owners of Residence Interests therein shall in addition to being Members of the Condominium Association, be mandatory members of the Neighborhood Association, whose contemplated sole purpose shall be to own and operate Commercial Unit CU-1, and which may provide certain services for the exclusive benefit of the occupants from time to time of the Two Bedroom Suites, whether or not such occupants are Members of the Neighborhood Association. More particularly, and in accordance with the separate organizational and governing documents of the Neighborhood Association, *its members* shall control the Neighborhood Association *and be responsible for all costs and expenses related to the ownership and operation of the Commercial Unit CU-1, including but not limited to any services that it may elect to provide.*

*In addition to the lien in favor of the Members Association against each Residence or Residence Interest, as applicable, for any unpaid assessments and for interest accruing thereon, together with related charges, as set forth in the Declaration, all Owners of Residences that are designated as a Two Bedroom Suite shall, in addition, be subject to a lien in favor of the Neighborhood Association to secure any unpaid assessments, fees or special charges imposed on members of the Neighborhood Association ...*

All Neighborhood Association liens *shall be subordinate to any Members Association lien.*

The Suites Owners' responsibility to pay all dues for CU-1 are not tied to ownership of the Deed for CU-1. To the contrary, Ritz-Carlton did not transfer the Deed for CU-1 to NA until December 2008, three years after it officially submitted the Heliconia building to the Club and two and a half years after it officially submitted the Gardenia building to the Club. Nevertheless, the maintenance fee assessments for CU-1 were billed to and collected from the Suites Owners, exclusively, for 2006, 2007 and 2008. Thus, Ritz-Carlton's own actions are consistent with the express intentions declared in all amendments to the governing Declarations: that the Suites Owners are exclusively responsible to pay all dues relating to CU-1 regardless of who holds the Deed to CU-1.

The governing Declarations quoted above do not contemplate, and Virgin Islands law does not permit, waiver or abrogation of a Suite Owner's obligation to pay the assessments for CU-1 by abandonment or waiver of the use or enjoyment of any element of the Condominium property, including CU-1, nor do they contain any caveat terminating such payment obligations upon any transfer of the Deed for CU-1. As noted, Ritz-Carlton invoiced the Suites Owners exclusively for all assessments relating to the Suites Lounge even during the three years Ritz-Carlton held the Deed to CU-1. Just as Ritz-Carlton's transfer of the Deed to NA in December 2008 did not affect the Suites Owners' obligation to pay all assessments for CU-1, NA's purported transfer of the Deed to GBCOA in September 2017 did not cancel or affect the Suites Owners' exclusive financial responsibility to pay all assessments for CU-1.

Finally, the Articles of Incorporation of Great Bay Condominium Owners Association state in Article II(B) that the "objects and purposes for which the Association is formed" are "[t]o promote the general welfare of the Association and its Members *and to enforce the provisions of the Declaration.*" Article IV, titled "Powers," confers on GBCOA the power "*to make and collect assessments against members to defray the expenses of the corporation in administering the affairs of the Condominium, enforcing the Declaration and to use the proceeds of the assessments in carrying out the objects and purposes*" of the Club.

GBCOA issued invoices to NA for annual maintenance fees for CU-1 for 2017 and 2018. The Management Company, on November 20, 2018, formally declared NA delinquent in payment of these dues via a letter to NA's Board of Directors. NA's Board has failed to assess the Suites Owners for these charges or for the annual assessments for CU-1 for 2019 through 2021. Such failure, however, does not relieve the Suites Owners from their obligation to pay all assessments relating to CU-1. The ongoing dispute between GBCOA's Board and NA's Board does *not excuse* the Suites Owners' personal responsibility to pay all assessments for CU-1. To the contrary, as the original Declaration recorded by Ritz-Carlton establishing the Great Bay Condominium (a/k/a Ritz-Carlton Destination Club, St. Thomas) states in Section 9:

Each Member of a Residence is *personally liable* for all assessments made against the Residence pursuant to this Declaration, and the Members Association may bring an action for a money judgment against a delinquent Member to collect all sums due the Members Association, including interest, late charges, costs, and reasonable attorney fees. *...No Member may withhold payment of any regular or special assessment or any portion thereof because of any dispute which may exist between that Member and the Members Association, the directors of the Members Association, the manager retained by the Members Association or the Declarant or among any of them, but rather each Member shall pay all assessments when due pending resolution of any dispute.*<sup>1</sup>

Accordingly, payment of the enclosed Invoice for delinquent assessments relating to CU-1 is due immediately. As a courtesy, the Members Association will waive 50% of Late Fees and Interest for all Suites Owners who accept and pay the invoice before November 9, 2021. If the Invoice is not paid in full within 30 days the Members Association will take further action as provided for in the Declarations.

Sincerely,

THE BOARD OF DIRECTORS

GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.

6910 GREAT BAY, ST. THOMAS, USVI 00802.

President: Abbey Chung

Vice-President: Steve Redan

Treasurer: Thomas Doyle

Secretary: Jimmy Archie

Director: Michael Gick

Enclosure: Invoice for Unpaid CU-1 Maintenance Assessments 2017-2021

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<sup>1</sup> All Declarations and Amendments quoted or otherwise referenced in this letter are accessible at [myritzcarltonclub.com](http://myritzcarltonclub.com). After logging in, go to the bottom right of the screen and under *News From the Club* click on *Your Club*. You will then see a menu on the left side of the screen called *My Membership* click on *Minutes and Documents*. Anyone experiencing difficulty logging in should contact Member Services.



THE RITZ-CARLTON  
CLUB

ST. THOMAS

October 01, 2021

Dear Member,

Enclosed you will find the Club's budget and invoice for the 2021-2022 season. The club has been faced with a number of challenges that have increased costs including the cost to remove sargassum/seaweed, wage and benefit cost increases and inflation as well as other cost increases across the board. Your Board of Directors was able to mitigate the dues increase by obtaining a new property insurance carrier that saved the association almost \$1 Million when compared to the previous policy. Insurance costs today, even with the new policy, are almost five times what they were in 2016. Insurance costs are the result of insurers' concern about the risk of damage associated with major storms as well as the costs associated with other catastrophic events. These types of increases have occurred before to a much smaller extent and after a period of time, along with a reduction in claims, insurance rates declined. There is no assurance this will occur again, but your Board hopes a more competitive insurance market will return.

Please find the attached approved 2022 budget as well.

Please note the following important information:

1. Payment due date is November 2, 2021
2. Payment options are:
  - a. Online at <https://ritzcarltonclub.myaccountinfo.com>
  - b. Check via phone by calling 800-451-0755  
(For calls outside the U.S. call 480-684-1779)
  - c. Wire transfer
  - d. Mail, both standard and overnight express
3. Credit Cards are **not** accepted
4. **15% Late Fee and 9% annual Finance Charge are posted to unpaid balances ten (10) days after the due date mentioned in #1 above**
5. **Usage Lockout at all locations until all delinquent balances are paid will also occur ten (10) days after the due date mentioned in #1 above**

We thank you for your prompt attention to this annual billing and for your timely payment on or before November 2, 2021.

We look forward to welcoming you back to St. Thomas soon.

Sincerely,

*Marsha Leighton-Herrmann*

Marsha Leighton-Herrmann  
Director of Finance  
The Ritz-Carlton Club, St. Thomas  
[Marsha.leighton.herrmann@ritzcarlton.com](mailto:Marsha.leighton.herrmann@ritzcarlton.com)

**ADDITIONAL INFORMATION**

If you have any questions regarding payment options, please contact a Concord Serving Corporation Customer Service Representative by calling 800-451-0755 (for calls outside the U.S. call 480-684-1779).

The phone lines are open Monday - Thursday, 5:00 a.m. to 7:00 p.m. Mountain Standard Time (MST), Friday from 5:00 a.m. to 6:00 p.m. MST, and Saturday 5:00 a.m. to 10:00 a.m. MST. They are closed on Sunday and major holidays.

Customer Service Representatives can accept check payments by phone and can assist with wire transfer banking instructions. You may also request wire transfer instructions by emailing [Resolutions@concordservicing.com](mailto:Resolutions@concordservicing.com).

To pay online, the payment website is: <https://ritzcarltonclub.myaccountinfo.com>. **Log in using the account number listed on your invoice. The payment password is different from your Ritz-Carlton Destination Club Membership password.** Select "forgot your password" if you need to reset the password. New users should select "Register Here" from the main Log in page. For login assistance, please call 800-451-0755.

Mail your payment to The Ritz-Carlton Club, St. Thomas at P.O. Box 29352, Scottsdale, AZ 85038-9352 along with the payment remittance stub located at the bottom of your invoice. All checks should be made payable to *The Ritz-Carlton Club, St. Thomas*. **Allow 7 to 12 business days for your payment to reach the payment center.**

For overnight express, send your payment and remittance stub to The Ritz-Carlton Club, St. Thomas, 4150 N. Drinkwater Blvd., Suite #200 Scottsdale, AZ 85251-3643.

The late payment fee assessment is 15% of the unpaid balance per Section 25 of the *Association Rules and Regulations* and will be assessed 10 days after the Due Date mentioned on page one. The interest charge assessed against unpaid balances will be assessed at a rate of 9% or the highest rate permitted by U.S.V.I. law, whichever is lower. An interest charge is allowed pursuant to Section 8.2(a) of the *Supplementary Declaration of Condominium*. A copy of the documents mentioned may be found on the Member Website at <http://www.mvritzcarltonclub.com>.

Section VI. Assessments, of the *Affiliation Agreement* prohibits access of a Member to the Club with unpaid annual Member's dues, late payment fees and interest. Members who have unpaid annual assessments, late fees and/or interest owing to the Association, shall be "locked-out" from all Ritz-Carlton Destination Clubs, including their home club in St. Thomas. "Lock-out" includes no access to reserved allocation or space available reservations at any Destination Club. If you do not timely make payment of all amounts due and owing for common charges, the "lock-out" will be implemented and shall remain in place until all amounts due and owing, including interest and late charges, are paid in full.

**GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.**

2022 OPERATING BUDGET <sup>(1),(2),(3),(5)</sup>

JANUARY 01, 2022 - DECEMBER 31, 2022

OPERATING EXPENSES <sup>(1)</sup>	ANNUAL TOTAL <sup>(2)</sup>	COMMERCIAL		TOTAL CLUB	PER RI	
		UNIT (CU-1)			2 BEDROOM SUITE	
Accounting	\$ 570,243.06	\$ 8,058.78	\$	562,184.28	\$ 405.63	\$
Administration	1,209,693.08	17,117.48		1,192,575.60	860.47	
Audit & Tax Preparation	30,701.88	-		30,701.88	22.15	
Bad Debt Allowance	133,268.40	-		133,268.40	96.16	
Billing & Collections	24,100.56	-		24,100.56	17.39	
Board of Directors' Expenses	82,004.04	-		82,004.04	59.17	
Concierge & Bell Services	1,687,173.84	-		1,687,173.84	1,217.34	
Contingency	30,003.84	-		30,003.84	21.65	
Credit Card Expense	57,108.60	-		57,108.60	41.21	
Housekeeping	2,937,118.07	41,559.95		2,895,558.12	2,089.22	
In House Laundry	1,010,112.12	-		1,010,112.12	728.82	
Human Resources	213,515.83	3,018.07		210,497.76	151.88	
Income Taxes	3,689.64	-		3,689.64	2.66	
Insurance	3,443,320.36	48,721.60		3,394,598.76	2,449.29	
Landscaping and Grounds Maintenance	779,084.28	-		779,084.28	562.13	
Legal Retainer	200,004.84	-		200,004.84	144.31	
Loss Prevention/Security Provisions	635,560.83	8,993.79		626,567.04	452.08	
Management Fee	946,402.82	13,392.62		933,010.20	673.19	
Member Services	625,205.88	-		625,205.88	451.10	
Other Income <sup>(4)</sup>	(305,159.04)	-		(305,159.04)	(220.18)	
Per Diem Income	(1,045,089.72)	-		(1,045,089.72)	(754.06)	
Postage, Printing and Handling	13,163.40	-		13,163.40	9.50	
Recreation, Pool & Beach Service	601,075.80	-		601,075.80	433.69	
Recreations - Retail	(31,998.60)	-		(31,998.60)	(23.09)	
Repairs & Maintenance	1,837,556.59	26,004.91		1,811,551.68	1,307.08	
Cable	24,931.47	352.83		24,578.64	17.73	
Electricity	1,276,391.00	18,056.00		1,258,335.00	907.92	
Gas	9,000.00	124.92		8,875.08	6.40	
High Speed Internet	138,600.00	1,958.76		136,641.24	98.59	
Refuse Collection	20,000.00	290.00		19,710.00	14.22	
Sewer	152,199.11	2,144.99		150,054.12	108.27	
Water	110,004.35	1,554.35		108,450.00	78.25	
<b>Total Operating Expenses</b>	<b>\$ 17,418,986.32</b>	<b>\$ 191,349.04</b>	<b>\$</b>	<b>17,227,637.28</b>	<b>\$ 12,430.17</b>	<b>\$</b>
Reserve for Replacement <sup>(6)</sup>	2,504,905.34	9,854.78		2,495,050.56	1,800.24	
<b>TOTAL OPERATING &amp; RESERVES</b>	<b>\$ 19,923,891.66</b>	<b>\$ 201,203.82</b>	<b>\$</b>	<b>19,722,687.84</b>	<b>\$ 14,230.41</b>	<b>\$</b>

EXHIBIT C

A.000048

**GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.**  
**2022 OPERATING BUDGET NOTES**  
**JANUARY 01, 2022 - DECEMBER 31, 2022**

- (1) Members are responsible for paying their own real property taxes.
- (2) The ANNUAL Total Budget includes operating expenses associated with 1,260 Residence Interests plus 1 Commercial Unit.
- (3) The Board has determined to bill this Budget through October 31, 2022 (including the last two months of billing of the 2021 Budget), with the remaining expenses for the last two months of 2022 to be included as part of the 2023 maintenance fee assessment billing.
- (4) This line item "Other Income" includes revenue received by the Association from finance charges and late fees associated with Member assessments and investment income of the Association.
- (5) Certain expenses incurred by the Management Company and its affiliates in connection with the operation and management of the Association, including but not limited to expenses associated with utilization of its corporate or administrative infrastructure, have been allocated to the Association and other resort properties operated by the Management Company and its affiliates on a basis determined by the Management Company in a commercially reasonable manner. This may include an allocation of certain costs and expenses on a fixed-rate basis, and actual costs and expenses incurred may be higher or lower than the amount allocated to the Association and reflected in this budget for the referenced fiscal year.
- (6) Planned replacement reserves are the monies that the Association's Board of Directors has identified to be used to defray the future repair of, replacement of, or addition to, those major components that the Association is obligated to maintain.

The itemized estimate of the remaining life and estimated replacement of the major components are listed below:

Components	Estimated Useful Life	Estimated Current Replacement Cost*	Estimated Remaining Useful Life	Anticipated Beginning Fund Balance 1/1/2022	% of Fund Balance to Replacement Cost	Age in Years as of 1/1/2022
Roof Replacement	20	\$ 4,176,152	7	\$ 597,949	14.32%	13
Furniture, Fixtures, and Equipment	14	36,107,785	4	6,083,824	16.85%	10
Building Painting	7	1,486,607	2	247,021	16.62%	5
Exterior Building Maintenance	14	16,037,951	9	1,674,900	10.44%	5
Pavement	15	45,804	13	1,681	3.67%	2
Common Area Rehabilitation	9	3,834,795	4	907,247	23.66%	5
<b>TOTAL</b>		<b>\$ 61,689,094</b>		<b>\$ 9,512,622</b>	<b>15.42%</b>	

\* Estimated Current Replacement Costs represents the cost to replace, repair, or restore a reserve component to its original functional condition as of January 1, 2022.

The association computes the estimated replacement reserves using procedures chosen by the governing body, as follows:

The cash flow method is being used, which is based on a minimal twenty-year projection of the association's future income and expenses to fund fully its replacement reserves requirements each year during that twenty-year period. The cash flow method requires the association to assess and collect from its owners to fully fund 100% of the estimated replacement reserves, in order to establish a full replacement reserve for the association by the end of each budget year.

The remaining life of a component can be estimated by subtracting the current age of component from the useful life of such component. Each year, the association board may adjust the amount of the estimated replacement reserve for an asset based on reasonable projections for inflation and for interest earned during the estimated useful life of the asset, and on the evaluation of the existing condition of the asset.



**GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.**

APPROVED BILLING <sup>(1),(2),(3),(5)</sup>

Billing November 1, 2021 - October 31, 2022

OPERATING EXPENSES <sup>(1)</sup>	ANNUAL TOTAL <sup>(2)</sup>	COMMERCIAL UNIT		TOTAL CLUB	PER RI 2 BEDROOM SUITE
		(CU-1)			
Accounting	\$ 565,278.66	\$ 8,058.78	\$	557,219.88	\$ 401.99 \$
Administration	1,229,487.68	17,117.48		1,212,370.20	874.89
Audit & Tax Preparation	30,896.28	-		30,896.28	22.15
Bad Debt Allowance	83,748.96	-		83,748.96	60.29
Billing & Collections	24,286.32	-		24,286.32	17.39
Board of Directors' Expenses	81,939.24	-		81,939.24	59.17
Concierge & Bell Services	1,662,466.32	-		1,662,466.32	1,199.50
Contingency	63,153.72	-		63,153.72	45.52
Credit Card Expense	55,540.08	-		55,540.08	40.11
Housekeeping	2,850,833.27	41,559.95		2,809,273.32	2,027.10
In House Laundry	995,953.68	-		995,953.68	718.64
Human Resources	217,960.03	3,018.07		214,941.96	155.15
Income Taxes	9,541.44	-		9,541.44	6.76
Insurance	3,577,419.64	48,721.60		3,528,698.04	2,546.10
Landscaping and Beach Maintenance	775,256.76	-		775,256.76	559.37
Legal Retainer	200,164.68	-		200,164.68	144.31
Loss Prevention/Security Provisions	629,843.31	8,993.79		620,849.52	447.82
Management Fee	943,971.02	13,392.62		930,578.40	671.47
Member Services	625,370.04	-		625,370.04	451.10
Other Income <sup>(4)</sup>	(309,477.24)	-		(309,477.24)	(223.32)
Per Diem Income	(1,006,989.48)	-		(1,006,989.48)	(726.55)
Postage, Printing and Handling	13,185.00	-		13,185.00	9.50
Recreation, Pool & Beach Service	589,987.80	-		589,987.80	425.79
Recreation - Retail	(32,110.92)	-		(32,110.92)	(23.09)
Repairs & Maintenance	1,812,712.99	26,004.91		1,786,708.08	1,289.30
Cable	24,462.03	352.83		24,109.20	17.51
Electricity	1,276,214.96	18,056.00		1,258,158.96	907.92
Gas	8,866.08	124.92		8,741.16	6.40
High Speed Internet	138,501.72	1,958.76		136,542.96	98.59
Refuse Collection	20,034.56	290.00		19,744.56	14.22
Sewer	152,108.03	2,144.99		149,963.04	108.28
Water	109,974.11	1,554.35		108,419.76	78.25
<b>Total Operating Expenses</b>	<b>\$ 17,420,587.60</b>	<b>\$ 191,349.04</b>	<b>\$</b>	<b>17,229,238.56</b>	<b>\$ 12,431.62 \$</b>
Reserve for Replacement <sup>(6)</sup>	2,640,873.74	9,854.78		2,631,018.96	1,898.35
<b>TOTAL OPERATING &amp; RESERVES</b>	<b>\$ 20,061,461.34</b>	<b>\$ 201,203.82</b>	<b>\$</b>	<b>19,860,257.52</b>	<b>\$ 14,329.97 \$</b>

EXHIBIT C

A.000050

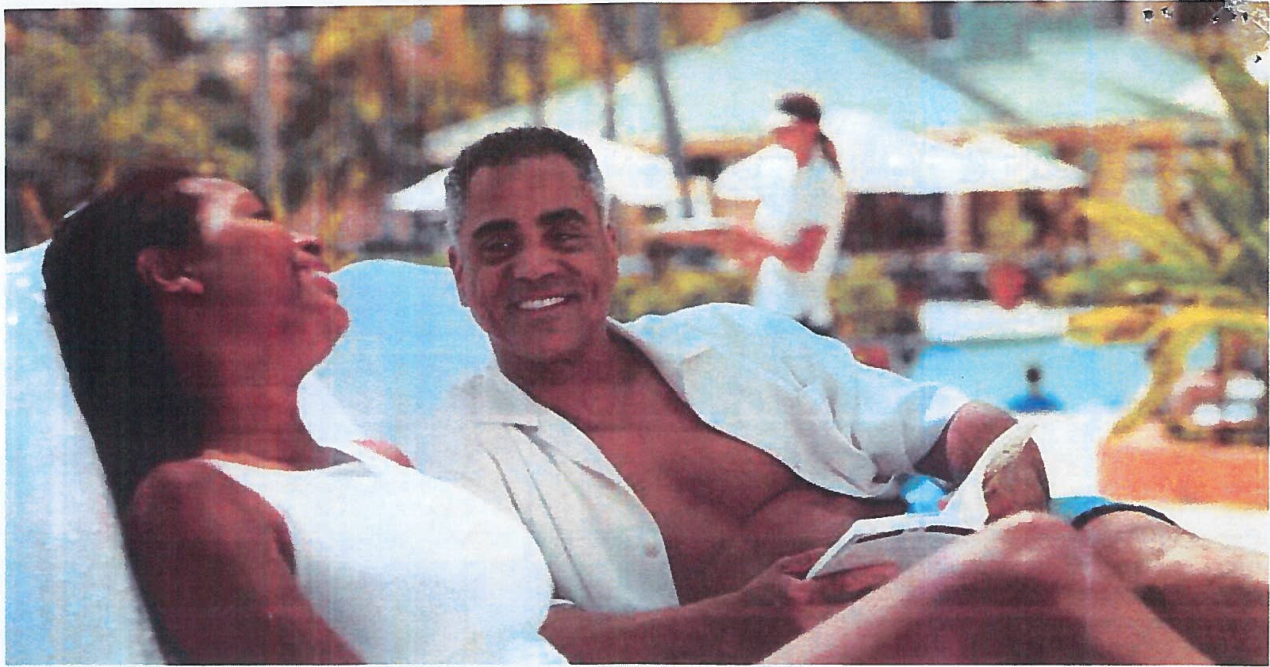
AN INTRODUCTION  
TO YOUR MEMBERSHIP



THE RITZ-CARLTON CLUB®  
ST. THOMAS

EXHIBIT D

A.000051



## ENJOYING YOUR EXPANDED TRAVEL OPTIONS<sup>1</sup>

### EACH YEAR YOU HAVE SEVERAL OPTIONS IN USING YOUR MEMBERSHIP INTEREST:

1. Travel using your Reserved Allocation
2. Exchange your Reserved Allocation to stay at your Home Club or a Sister Club
3. Enjoy last minute travel opportunities through the Space Available Program
4. Stay at Ritz-Carlton Hotels worldwide through the Hotel Reservation Service
5. Participate in 3RD HOME<sup>2</sup>

You also have the option to enroll and deposit your Allocation in The Lion & Crown Exchange Program in order to access the following usage options:

1. Elect to deposit all or a portion of your Allocation to receive Exchange Points (also sometimes referred to as Vacation Club Points) and use them within the Marriott Vacation Club Destinations<sup>TM</sup> Exchange Program<sup>3</sup>
2. Elect to deposit your Reserved Allocation for exchange with Exclusive Resorts

These options are currently available to Ritz-Carlton Club Members in Good Standing. Reservation Procedures and Exchange Procedures, relating to The Cobalt Travel Co., LLC, The Lion & Crown Travel Co., LLC, and the Marriott Vacation Club Destinations Exchange Program, as applicable, are all subject to change from time to time.

Members may join 3RD HOME prior to July 15, 2015 and receive a 3-year complimentary membership at the Chairman's Club level, enabling Members to access resort properties available through the 3RD HOME Exchange Program. Members who join 3RD HOME between July 15, 2015 and April 15, 2016 will receive a 2-year complimentary membership at the Chairman's Club level.

Enrolled Members may currently elect to deposit Reserved Allocation in 7-consecutive evening increments only, to receive Vacation Club Points, as is subject to change from time to time. Evenings previously released for exchange are not eligible for election.

This How to Use Guide is being provided as a summary of certain portions of the reservation and/or exchange rules and procedures for The Ritz-Carlton Club Membership Program, The Lion & Crown Exchange Program and/or the Marriott Vacation Club Destinations Exchange Program. Use of this summary guide should not take the place of full and careful review of the Reservation Procedures for the applicable The Ritz-Carlton Club, The Lion & Crown Travel Co., LLC Exchange Procedures for The Cobalt Travel Company, LLC Members with Access to The Lion & Crown Exchange Program and/or The Marriott Vacation Club Destinations Exchange Program Exchange Procedures, as applicable, all of which are subject to change and may be amended from time to time, or any other applicable rules associated with benefits or services referenced within this summary guide.

**EXHIBIT D**

**A.000052**



## OPTION 1

### TRAVEL USING YOUR RESERVED ALLOCATION

Your Membership Interest provides you with Reserved Allocation for a specific number of pre-assigned evenings of use annually at your Home Club. A calendar displaying the upcoming dates of your Reserved Allocation can be found at [www.myrcdc.com](http://www.myrcdc.com).

Your Reserved Allocation is automatically confirmed on your behalf approximately 16 months prior to the first day of your use period. You will receive an email confirmation after your Reserved Allocation is automatically confirmed and an additional reminder email confirmation approximately 120 days prior to the first day of your use period.

EXHIBIT D

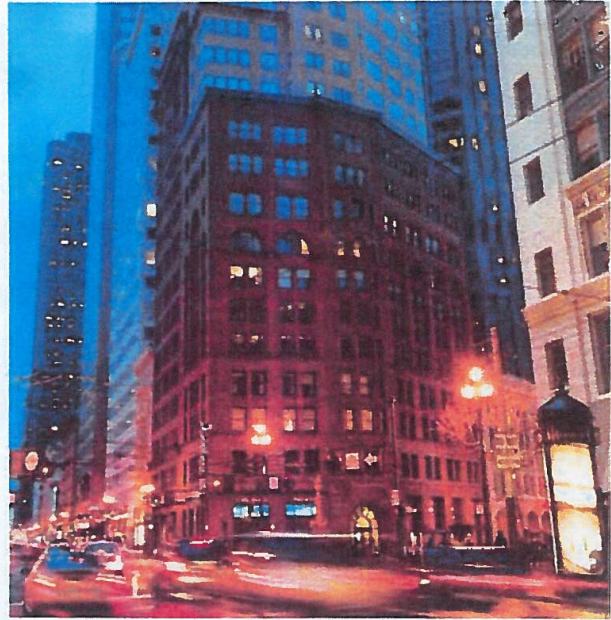
A.000053

## OPTION 2

### EXCHANGE AT YOUR HOME CLUB OR A SISTER CLUB

Your Membership Interest provides you with the option to exchange your Reserved Allocation for stays at your Home Club or a Sister Club.

Exchange requests are accepted on a first-come, first-served basis within the applicable request window, subject to availability and reservation rules. The chart below displays the various exchange request windows:



EXCHANGE TYPE	DESIRED DESTINATION	DESIRED TRAVEL SEASON	REQUEST WINDOW	MINIMUM LENGTH OF STAY
Home Club – Same Season	Home Club	Same Season	15 months prior to use period	7 evenings
Home Club – Alternate Season	Home Club	Alternate Season	13 months prior to use period	7 evenings
Club System Exchange	Sister Club	Any Season	9 months prior to use period	7 evenings
Open Exchange	Any Club	Any Season	6 months prior to use period	1 evening

Subject to availability, exchange requests are like-for-like, meaning that if you own a two-bedroom residence, you may request a two-bedroom residence. Floor plans vary at the Clubs, so when you request a Sister Club exchange, the bedroom configurations and amenities may be different from your Home Club. If you are unable to be confirmed into your requested exchange at the time when you request it, you may place a waitlist request. You may request any type of unit within the 60 day Space Available period, subject to availability.

To place an exchange request, contact Member Services at 1.888.220.2084, or visit [www.myrcdc.com](http://www.myrcdc.com) to release your Reserved Allocation to place a request for your desired travel dates and location.

**EXHIBIT D**

**A.000054**



### OPTION 3

#### ENJOY LAST MINUTE TRAVEL OPPORTUNITIES THROUGH THE SPACE AVAILABLE PROGRAM

Within 60 days of arrival, enjoy the ability to reserve Space Available Time at per diem rates at Ritz-Carlton Club locations, subject to availability and reservation rules.

Per diem fees are currently determined annually for each respective Club. There are two types of per diem fees available to you:

- Member – Available to the Member and Family Members as defined in the applicable reservation rules.
- Guest of a Member – Available to a Guest (as defined in the applicable reservation rules) of a Member who is not the Member or a Family Member.

In lieu of paying the per diem fee, you have the option to exchange Reserved Allocation within 60 days of arrival, subject to availability and reservation rules.

To reserve a Space Available reservation, contact Member Services at 1.888.220.2084 or view availability and instantly confirm your reservation, subject to availability, by visiting [www.myrcdc.com](http://www.myrcdc.com).

EXHIBIT D

A.000055



## CANCELLATION POLICY

For all confirmed reservations the fees, if any, for cancellations are as follows:

TIMEFRAME	CANCELLATION FEE
More than 45 days prior to arrival	No Cancellation fee
45 to 31 days prior to arrival	50% of such cancelled Allocation for Space Available Time & 50% of such Member Per Diem Fee (plus tax)
30 days or less prior to arrival	100% of such cancelled Allocation for Space Available Time & 100% of such Member Per Diem Fee (plus tax)

Currently, artist requests may be cancelled at any time without incurring a fee.

**EXHIBIT D**

**A.000056**



## OPTION 4

### STAY AT RITZ-CARLTON HOTELS WORLDWIDE THROUGH THE HOTEL RESERVATION SERVICE

Currently, as a Member of The Ritz-Carlton Destination Club, you enjoy an advantage when traveling to participating Ritz-Carlton hotels worldwide through the Hotel Reservation Service. The Hotel Reservation Service currently includes the following:

- 30% off published rack rate when available or best available rate (when hotel is not sold out)
- Upgrade at check-in, based upon availability
- Daily breakfast for two
- 4 p.m. checkout, based upon availability
- Welcome amenity
- Special hotel amenity
- Welcome note from the General Manager
- VIP status with Guest Relations

The Hotel Reservation Service is available to Members only and is not transferrable to family members, friends or guests. Any of the terms and conditions pertaining to the Hotel Reservation Service may be changed, limited, modified, or canceled at any time with or without notice. The Hotel Reservation Service is limited to two rooms per evening per interest owned.

To reserve a reservation at a Ritz-Carlton Hotel using the Hotel Reservation Service, contact Member Services at 1.888.220.2084 or view availability and instantly confirm your reservation, subject to availability, by visiting [www.myrcdc.com](http://www.myrcdc.com).

**EXHIBIT D**

**A.000057**



## OPTION 5 PARTICIPATE IN 3RD HOME



3RD HOME is a private reciprocal travel club for luxury second homeowners. The 3RD HOME portfolio comprises more than 2,600 luxury properties in 70 countries. In addition to private homes, 3RD HOME provides access to over 30 full-service residence clubs.

Members of The Ritz-Carlton Destination Club who join 3RD HOME by July 15, 2015 will have their initiation fee waived and will enjoy complimentary access to 3RD HOME's Chairman's Club Membership benefits for three years.<sup>4</sup>

To join 3RD HOME, visit [www.ritzcarltonclub.3rdhome.com/signup](http://www.ritzcarltonclub.3rdhome.com/signup).

Upon enrollment with 3RD HOME, you may earn "Keys" for each week of your Reserved Allocation that you deposit. The more desirable the week that is deposited, the more Keys that are earned. Ritz-Carlton Destination Club residences are assigned a Key level based on their number of bedrooms. The chart below indicates the number of keys a Member will earn for each non-peak/off-season week of Reserved Allocation deposited:

- 1 Bedroom = 2 Keys
- 2 Bedroom = 2 Keys
- 3 Bedroom = 3 Keys
- 4 Bedroom = 4 Keys

Extra Keys are earned when you deposit more desirable weeks, including double Keys when you deposit a Peak week and Triple Keys when you deposit a Holiday week.

3RD HOME will credit your account immediately with Keys for all deposited weeks that are more than 60 days from arrival, and are not Off-Season. For weeks that are deposited within 60 days of arrival, or are Off-Season, Keys will be credited by 3RD HOME when the week is reserved by another member.

Once earned, Keys may be used to reserve any home or residence club in the 3RD HOME system, subject to availability, by visiting [www.3rdhome.com](http://www.3rdhome.com).

There is an exchange fee payable to 3RD HOME based upon the number of Keys required to visit the desired destination. For the calendar year ending December 31, 2015, the fees range from \$395 to \$995 per confirmed week. Certain Members of The Ritz-Carlton Destination Club currently enjoy a fixed rate of \$495 when reserving a week at certain locations.

<sup>4</sup>Members who join 3RD HOME prior to July 15, 2015 and receive a 2 year complimentary membership at the Chairman's Club level, enabling Members to access resort properties available through the 3RD HOME Exchange Program. Members who join 3RD HOME between July 16, 2015 and April 15, 2016 will receive a 2 year complimentary membership at the Chairman's Club level.

EXHIBIT D

A.000058



## THE LION & CROWN TRAVEL CO., LLC

As a Member of The Ritz-Carlton Destination Club, you have the option of enrolling in The Lion & Crown Exchange Program to enjoy additional usage options. These currently include the ability to elect to deposit a week or more of your Allocation, on a completely voluntary basis, and receive Vacation Club Points for use within the Marriott Vacation Club Destinations Exchange Program.

If you are not currently enrolled, you may contact Member Services at 888.220.2084 and request enrollment documents. Following that, you will receive either an email or packet containing the enrollment documents. Upon receipt of the enrollment documents, simply follow the instructions for enrollment.

Subject to availability, Enrolled Members may take advantage of the following usage options currently available:

1. Elect to deposit all or a portion of your Allocation in 7-consecutive night increments, and receive Vacation Club Points for use within the Marriott Vacation Club Destinations™ Exchange Program.
2. Elect to deposit your Reserved Allocation for Exchange with Exclusive Resorts.

**EXHIBIT D**

**A.000059**



## USAGE OPTION 1 FOR ENROLLED MEMBERS RECEIVING VACATION CLUB POINTS<sup>5</sup>

Vacation Club Points may be currently used for vacations at over 50 Marriott Vacation Club resorts worldwide, and certain Ritz-Carlton Club locations. Vacation Club Points may also currently be used for cruises, tours, boutique hotel stays, golf experiences, and much more through the Explorer Collection.

- If you wish to participate in the Marriott Vacation Club Destinations Exchange Program, you must first elect to deposit your Allocation in 7-consecutive night increments for Vacation Club Points. To learn how many Vacation Club Points you will receive, visit [www.myrcdc.com](http://www.myrcdc.com).

### BENEFIT LEVELS

There are currently<sup>6</sup> four benefit levels within the Marriott Vacation Club Destinations Exchange Program:

BENEFIT LEVEL	NUMBER OF VACATION CLUB POINTS <sup>7</sup>
Owner	Up to 3,999
Select	4,000 to 6,999
Executive <sup>8</sup>	7,000 to 9,999
Presidential	10,000 to 14,999
Chairman's Club <sup>9</sup>	15,000 or more

<sup>5</sup>Subject to availability and reservation rules.

<sup>6</sup>Effective April 30, 2015, benefit level thresholds and benefits are subject to change from time to time.

<sup>7</sup>Number of Vacation Club Points is the total of the exchange value of all enrolled weeks, plus any additional Vacation Club Points purchased in the Marriott Vacation Club Destinations program. All Every-Other-Year weeks are valued at 50% of their full exchange value every year.

<sup>8</sup>Owners with 6,500 to 6,999 Vacation Club Points as of April 29, 2015 who were granted Executive status will be required to obtain 7,000 Vacation Club Points to again achieve Executive status if their Owner's interest level falls below 6,500 Vacation Club Points.

<sup>9</sup>Owners with 13,000 to 14,999 Vacation Club Points as of April 29, 2015 who were granted Chairman's Club status will be required to obtain 15,000 Vacation Club Points to again achieve Executive status if their Owner's interest level falls below 13,000 Vacation Club Points.

**EXHIBIT D**

**A.000060**



**DEADLINE FOR ELECTING TO DEPOSIT YOUR ALLOCATION FOR VACATION CLUB POINTS:**

- You may elect to deposit your Allocation to receive Vacation Club Points prior to the time frame for your benefit level. If you are a Owner, Select or Executive Owner, your deadline for electing to deposit your Allocation to receive Vacation Club Points is September 30th of the year prior; and if you are a Presidential or Chairman's Club Owner, the deadline for electing to deposit your Allocation to receive Vacation Club Points is October 31st of the prior year. To elect to deposit your Allocation for Vacation Club Points, contact Member Services at 888.220.2084.

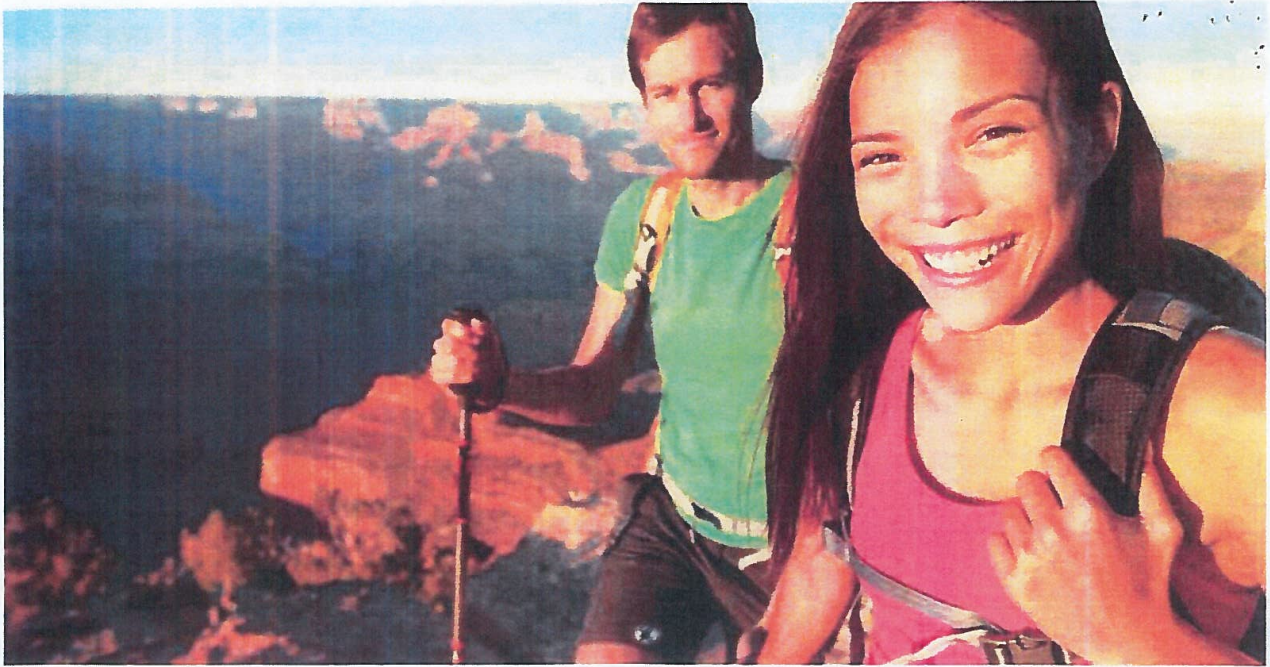
**MANAGING VACATION CLUB POINTS:**

- Your Use Year is the period of time when you may use your annual allotment of Vacation Club Points. Enrolled Members' Use Year is the calendar year: January 1 through December 31. For example, if you choose to elect to deposit your Allocation and receive Vacation Club Points for your Use Period starting on March 17, 2017 then you will be able to plan vacations using those Vacation Club Points to be used between January 1 and December 31 of 2017.
- Banking Vacation Club Points –You may bank some, or all of your Vacation Club Points to be used in a following Use Year as outlined in the chart below. Once Banked, Vacation Club Points must be used within the designated period and may not be borrowed back, banked again or transferred to another Owner.

**BANKING DEADLINES AND USE PERIOD**

BENEFIT LEVEL	BANKING DEADLINE <i>prior to the end of current use year</i>	USE BANKED VACATION CLUB POINTS
Owner	6 months	Within the immediately following Use Year
Select	6 months	
Executive	4 months	
Presidential	4 months	Within the immediately following 1.5 Use Years
Chairman's Club	4 months	Within the immediately following 2 Use Years

**EXHIBIT D**



- **Borrowing Vacation Club Points** – You may borrow all or a portion of Vacation Club Points in order to confirm a reservation in the immediately preceding Use Year up to 25 months in advance of the beginning of the Use Year you are borrowing from. (For example, if your Use Year begins on January 1, 2018, then you may borrow Vacation Club Points from that Use Year as early as December 1, 2015.) Once borrowed, if you later cancel the vacation for which you borrowed Vacation Club Points, you may use them to reserve another vacation prior to the original expiration date. Borrowed Vacation Club Points may not be banked into a following Use Year or transferred to another Member.

- **Transferring Vacation Club Points** – You may transfer your Vacation Club Points, excluding banked or borrowed Vacation Club Points, to another Marriott Vacation Club Destinations Exchange Program Member. The Vacation Club Points will retain the Use Year parameters of the Member who transferred them. Transferred Vacation Club Points may not be banked, borrowed or traded for Marriott Rewards points.

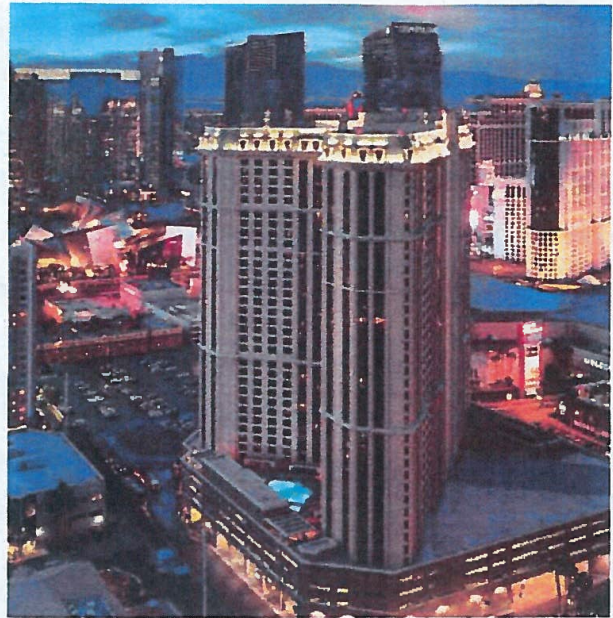
To bank, borrow or transfer Vacation Club Points, contact Member Services at 888.220.2084.

**EXHIBIT D**

**A.000062**

## MARRIOTT VACATION CLUB COLLECTION

The Marriott Vacation Club Collection is currently comprised of more than 50 Marriott Vacation Club Resorts around the world. Marriott Vacation Club Resorts feature villa accommodations which may include deluxe guestrooms to one-bedroom, two-bedroom and three-bedroom villas.



Marriott Vacation Club Resorts are located around the world, including currently in the following destinations:

### COASTAL RESORTS

- Hilton Head and Myrtle Beach, South Carolina
- Aruba and St. Kitts, Caribbean
- St. Thomas, U.S. Virgin Islands
- Palm Beach Shores and Marco Island, Florida
- Oahu, Maui and Kauai, Hawaii
- Newport Beach, California

### URBAN LOCATIONS

- Boston, Massachusetts
- Las Vegas, Nevada

### DESERT RESORTS

- Phoenix, Arizona
- Palm Desert, California

### GOLF DESTINATIONS

- Absecon, New Jersey
- Williamsburg, Virginia
- Miami, Florida

### MOUNTAINS

- Park City, Utah
- Vail and Breckenridge, Colorado
- South Lake Tahoe, California

### EUROPE

- Bailly-Romainvilliers, France
- Mallorca, Malaga, and Marbella, Spain

The number of Vacation Club Points required for vacations will vary, based on a number of factors, including:

- Time of year and check-in day,
- Villa size,
- Length of stay, and
- View type

To discover the number of Vacation Club Points required for your desired vacation, visit [www.myrcdc.com](http://www.myrcdc.com).

EXHIBIT D

A.000063



**RESERVATIONS WITHIN MARRIOTT VACATION CLUB COLLECTION, AND THE RITZ-CARLTON CLUB, VAIL, MAY BE MADE AS FOLLOWS:**

BENEFIT LEVEL	13 MONTHS IN ADVANCE <sup>10</sup>	12 MONTHS IN ADVANCE <sup>11</sup>	10 MONTHS IN ADVANCE <sup>10</sup>
Owner	7 or more consecutive nights with a Points Premium <sup>12</sup>	7 or more consecutive nights	Any number of nights
Select	7 or more consecutive nights	7 or more consecutive nights	Any number of nights
Executive	Any number of nights	Any number of nights	Any number of nights
Presidential	Any number of nights	Any number of nights	Any number of nights
Chairman's Club	Any number of nights	Any number of nights	Any number of nights

You may make a reservation by calling Member Services at 888.220.2084.

If a reservation is not available to immediately confirm within the Marriott Vacation Club Collection (does not include Luxury Property, other than the Ritz-Carlton Club, Vail), subject to availability of waitlist requests, you may request to be placed on a waitlist for the vacation you would like to confirm. Currently, a wait list request for a reservation for 7 or more consecutive nights may be made as early as 12 months in advance of the first day of a given Use Period; and for less than 7 nights as early as 10 months in advance.

<sup>10</sup>Reservations for the 13 and 10 month reservation windows are currently first available on Tuesday mornings beginning at 9 a.m. Eastern Time, as such day and time are subject to change.

<sup>11</sup>Reservations for the 12 month reservation window are currently first available on Friday mornings beginning at 9 a.m. Eastern Time, as such day and time are subject to change.

<sup>12</sup>Currently, Members may reserve 7 or more consecutive nights 13 months in advance, with a 20% additional Points Premium.

**EXHIBIT D**



THE FOLLOWING LAST-MINUTE RESERVATIONS POINTS DISCOUNTS ARE CURRENTLY OFFERED TO ENROLLED RITZ-CARLTON CLUB MEMBERS WHEN RESERVING NIGHTS WITHIN MARRIOTT VACATION CLUB COLLECTION AND THE RITZ-CARLTON CLUB, VAIL, AS FOLLOWS:<sup>13</sup>

BENEFIT LEVEL	60 DAYS IN ADVANCE	30 DAYS IN ADVANCE
Executive	N/A	25% discount off the number of Vacation Club Points required
Presidential	30% discount off the number of Vacation Club Points required	30% discount off the number of Vacation Club Points required
Chairman's Club	30% discount off the number of Vacation Club Points required	30% discount off the number of Vacation Club Points required

<sup>13</sup>Special benefits available to Members in Good Standing and are subject to change or termination in the sole discretion of the Marriott Vacation Club Distribution/Exchange Program.

**EXHIBIT D**

**A.000065**





RESERVATIONS AT LUXURY PROPERTY INCLUDING THE RITZ-CARLTON CLUB, ST. THOMAS; THE RITZ-CARLTON CLUB, ASPEN HIGHLANDS; THE RITZ-CARLTON CLUB, LAKE TAHOE; AND THE RITZ-CARLTON CLUB, SAN FRANCISCO, MAY BE MADE AS FOLLOWS:

BENEFIT LEVEL	13 MONTHS IN ADVANCE	6 MONTHS IN ADVANCE
Owner	N/A	Any number of nights and waitlist available <sup>14</sup>
Select	N/A	Any number of nights and waitlist available <sup>14</sup>
Executive	Any number of nights <sup>14</sup>	Any number of nights and waitlist available <sup>14</sup>
Presidential	Any number of nights <sup>14</sup>	Any number of nights and waitlist available <sup>14</sup>
Chairman's Club	Any number of nights <sup>14</sup>	Any number of nights and waitlist available <sup>14</sup>

You may make a reservation by calling Member Services at 888.220.2084.

*Please note: Member Services is available at 9 a.m. Eastern Time every day. Reservations are confirmed on a first-come, first-served basis.*

If a reservation is not available to immediately confirm at a Luxury Property (other than the Ritz-Carlton Club, Vail), Enrolled Members may place a waitlist request as early as 6 months in advance of the first day of a given Use Period. Marriott Vacation Club Destinations™ Exchange Program's ability to confirm a specific exchange request is dependent upon availability of the desired accommodation or service. Thus, the Marriott Vacation Club Destinations Exchange Program cannot guarantee specific resort choices, dates of travel, or types or sizes of accommodations or services.

<sup>14</sup>Reservations at the Ritz-Carlton, St. Thomas, currently have a three-night minimum stay requirement.

**EXHIBIT D**

**A.000066**



## EXPLORER COLLECTION<sup>15</sup>

Subject to availability, Vacation Club Points may also be used for unique vacation adventures and tours through the Explorer Collection currently including the following:

- Cruises – Relax and recharge with an ocean or river cruise on the world's most popular cruise lines
- Guided Tours – Experience guided, group tours that explore truly fascinating regions around the world
- Hotels – Special Member packages for hotel stays put you in the perfect position to explore the world's most exhilarating cities, which currently include those listed below<sup>16</sup>
  - The Cosmopolitan of Las Vegas, Nevada
  - Grand Bohemian Hotel, Asheville, North Carolina
  - The Portman Ritz-Carlton, Shanghai, China
  - Travaasa Hana, Hana, Maui, Hawaii
  - The Carlton Hotel, New York City
  - Scrub Island Resort, Spa and Marina, BVI
  - El Monte Segrado, Taos, New Mexico
  - Boscolo Prague, Czech Republic
  - Boscolo Exedra Roma, Italy
  - Boscolo Venezia, Italy
  - Boscolo Budapest, Hungary

Executive, Presidential and Chairman's Club Owners may currently also use Vacation Club Points for reservations at select Ritz-Carlton® Hotels and boutique hotels including the following locations:<sup>16</sup>

- Ritz-Carlton Naples, Florida
- Ritz-Carlton New Orleans, Louisiana
- Ritz-Carlton Kapalua, Maui, Hawaii

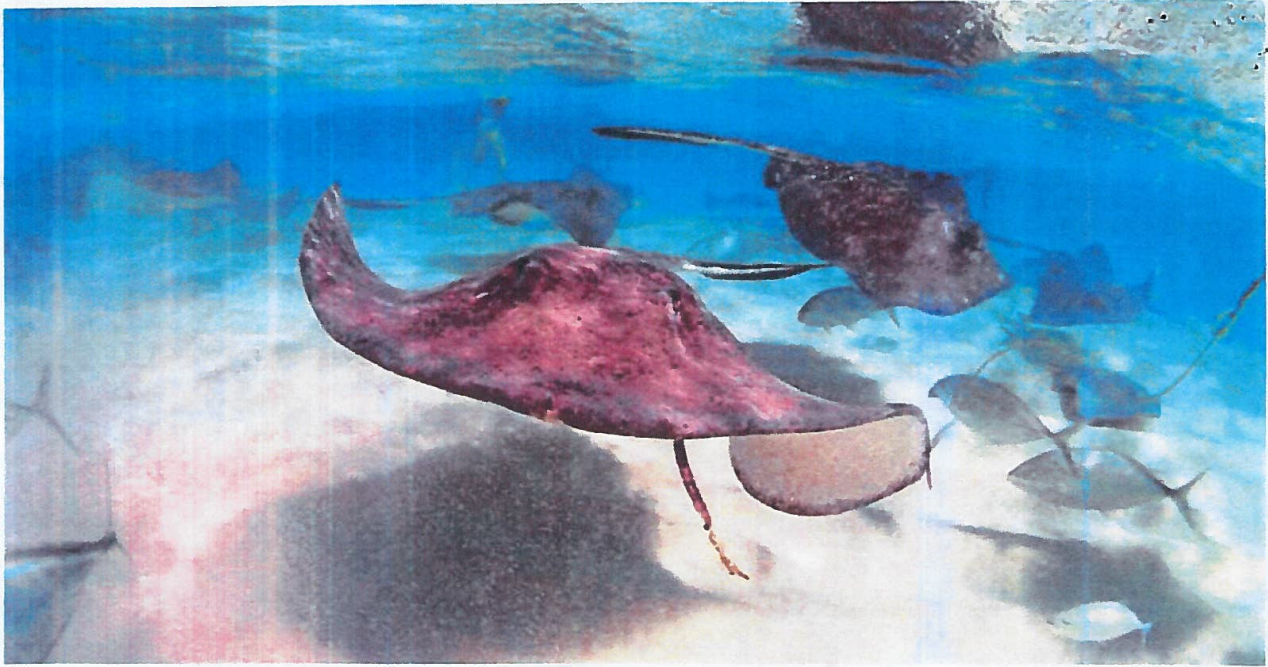
To learn about all of the Explorer Collection options and to book your trip, contact Member Services at 888.220.2084.

Access to the Explorer Collection is made available through the Marriott Vacation Club Destinations Exchange Program and is subject to the terms and conditions as outlined in the applicable Marriott Vacation Club Destinations Exchange Program documents. Actual experiences will be provided via contractual arrangements with third-party providers and may require the payment of additional fees.

Hotel locations are subject to change.

**EXHIBIT D**

**A.000067**



## USAGE OPTION 2 FOR ENROLLED MEMBERS EXCHANGE WITH EXCLUSIVE RESORTS

Currently, Members who are enrolled with The Lion & Crown Travel Co., LLC have the option of exchanging with Exclusive Resorts.

The agreement with Exclusive Resorts is subject to negotiation on an annual basis. To the extent this option remains available, terms and inventory may change.

For questions about Exclusive Resorts, contact Member Services at 888.220.2084.

**EXHIBIT D**

**A.000068**



## IMPORTANT CONTACT INFORMATION

### MEMBER SERVICES

310 Bearcat Drive  
Salt Lake City, UT 84115  
Toll-Free: 888.220.2084

### WEB

[myrcdc.com](http://myrcdc.com)

### HOURS OF OPERATION

Monday – Saturday, 9 a.m. – 9 p.m. ET  
Sunday, 9 a.m. – 6 p.m. ET

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As of April 30, 2015 RC-15-000069-0450

**EXHIBIT D**

**A.000069**

12/09/2005 8:24AM  
Official Records of  
ST THOMAS/ST JOHN  
WILSON S. HARRI SMITH  
RECORDER OF DEEDS

**THIRD AMENDMENT TO  
SUPPLEMENTARY DECLARATION OF CONDOMINIUM  
FOR THE CLUB AT GREAT BAY CONDOMINIUM ST. THOMAS,  
U.S. VIRGIN ISLANDS**

**Doc# 2005012780**

THIS THIRD AMENDMENT TO SUPPLEMENTARY DECLARATION FOR THE CLUB AT GREAT BAY CONDOMINIUM (the "Third Amendment to Supplementary Declaration") is made effective the 15<sup>th</sup> day of November, 2005, by RC HOTELS (VIRGIN ISLANDS), INC., a corporation organized and existing under the laws of the U.S. Virgin Islands, whose principal office is situated at Parcel No. 6 Estate Nazareth, St. Thomas, Virgin Islands, hereinafter referred to as the "Declarant":

**Doc# 2005012780**

WHEREAS, by Declaration Establishing a Plan for Condominium Ownership of Parcel Nos. 4-2 and 4-3 Estate Nazareth, No. 1 Red Hook Quarter, St. Thomas, U.S. Virgin Islands, Pursuant to Chapter 33, Title 28 of the Virgin Islands Code made on May 10, 2002, and recorded in the Office of the Recorder of Deeds for St. Thomas and St. John on May 31, 2002, as Document No. 2002002741, as amended by that certain First Amendment recorded on July 5, 2002 in the Office of the Recorder of Deeds for St. Thomas and St. John as Document No. 2002003593 (the "First Amendment"), that certain Second Amendment recorded on December 6, 2002 in the Office of the Recorder of Deeds for St. Thomas and St. John as Document No. 2002006963 (the "Second Amendment") that certain Third Amendment recorded on January 7, 2004 in the Office of the Recorder of Deeds for St. Thomas and St. John as Document No. 2004000046 (the "Third Amendment") and by that certain Fourth Amendment recorded simultaneously herewith (the "Fourth Amendment") (collectively, together with all corrective instruments and other amendments related thereto, the "Declaration"), the Declarant submitted the land described therein to the provisions of Chapter 33, Title 28, Virgin Islands Code, known also as the "Condominium Act of the Virgin Islands", which condominium is known as Great Bay Condominium; and

WHEREAS, the Declaration was supplemented by that certain Supplementary Declaration of Condominium for The Club at Great Bay Condominium (the "Club Declaration"), St. Thomas, U.S. Virgin Islands made by the Declarant on May 10, 2002, and recorded in the Office of the Recorder of Deeds for St. Thomas and St. John on May 31, 2002, as Document No. 2002002742, as amended by that certain First Amendment to Supplemental Declaration of Condominium for The Club at Great Bay Condominium recorded on December 6, 2002 in the Office of the Recorder of Deeds for St. Thomas and St. John as Document No. 2002006962 and by that certain Second Amendment to Supplemental Declaration of Condominium for The Club at Great Bay Condominium recorded on January 7, 2004 in the Office of the Recorder of Deeds for St. Thomas and St. John as Document No. 2004000045 (collectively, together with all corrective instruments and other amendments related thereto, the "Supplementary Declaration") and which Supplementary Declaration created the Residence Interests in the Condominium; and

WHEREAS, Declarant, by the Fourth Amendment to the Condominium Declaration, recorded simultaneously herewith, has amended the Declaration pursuant to Article 19 thereof in order to submit to the Condominium the land, building and improvements relating to the Phase

described therein as containing Building H;

NOW, THEREFORE, pursuant to Article XVII thereof, the Supplementary Declaration is hereby amended in the following respects only:

1. The property that is hereby submitted to the condominium form of ownership under this Third Amendment to Supplementary Declaration of Great Bay Condominium for the Club at Great Bay Condominium (the "Third Amendment to Supplementary Declaration"), consists of certain Residences in the Condominium which were made subject to the Declaration pursuant to the Fourth Amendment to the Declaration of Condominium, and are hereby becoming subject to the Club Declaration, including becoming subject to certain time parameters pursuant to Article V of the Club Declaration. The Residence Interests are more particularly described in **Exhibit "A"** attached hereto and by this reference made a part hereof, together with the covenants, conditions and restrictions set forth in the Declaration. No other property is being submitted as Residence Interests at this time.

2. Annexed hereto and made a part hereof as **Exhibit "A"** is a list of all such Residence Interests in Building H which will constitute the fifth (5<sup>th</sup>) phase of the Residence Interests and Common Elements subject to the Club Declaration as amended by this Third Amendment to Supplementary Declaration (collectively with those contained in Buildings A, B, C and D referred to hereinafter as the "Club"), their location, identification numbers for each Residence Interest, and approximate areas or number of rooms in each Residence (all as shown on the floor plans attached as Exhibit "B" to the Fourth Amendment to the Declaration of Condominium).

3. The percentage of ownership is hereby modified with the submission of this Phase Five (5) Property and Exhibit "A" previously attached to and recorded with the Club Declaration is hereby replaced by the attached **Exhibit "A"**.

4. The twelve (12) Residences which are the subject of this amendment are Two Bedroom Suites and, as such, all Owners of Residence Interests therein shall in addition to being Members of the Condominium Association, be mandatory members of the Neighborhood Association, whose contemplated sole purpose shall be to own and operate a Commercial Unit, anticipated to be created in a subsequent phase, and which may provide certain services for the exclusive benefit of the occupants from time to time of the Two Bedroom Suites, whether or not such occupants are Members of the Neighborhood Association. More particularly, and in accordance with the separate organizational and governing documents of the Neighborhood Association, its members shall control the Neighborhood Association and be responsible for all costs and expenses related to the ownership and operation of the Commercial Unit owned by it, including but not limited to any services that it may elect to provide.

In addition to the lien in favor of the Members Association against each Residence or Residence Interest, as applicable, for any unpaid assessments and for interest accruing thereon, together with related charges, as set forth in the Declaration, all Owners of Residences that are designated as a Two Bedroom Suite shall, in addition, be subject to a lien in favor of the

Neighborhood Association to secure any unpaid assessments, fees or special charges imposed on members of the Neighborhood Association pursuant to the Bylaws of the Neighborhood Association, which shall include, but not be limited to, interest, costs and attorney's fees incurred in the collection of a delinquent payment or enforcement of a lien. The Neighborhood Association lien shall be effective from and after recording a claim of lien in the Public Records of the U.S. Virgin Islands stating the legal description of the Residence (or Residence Interest, as applicable) the name of the Member of record, the amount claimed to be due and the due dates. The lien shall continue in effect until all sums secured by the lien shall have been fully paid or until such time as is otherwise permitted by law. Such claims of lien shall be signed and verified by an officer of the Neighborhood Association, or by an authorized agent of the Neighborhood Association, e.g., officer or designated employee of the manager retained by the Neighborhood Association. Upon full payment, the party making payment shall be entitled to a recordable satisfaction of lien, to be prepared and recorded at such party's expense. All Neighborhood Association liens shall be subordinate to any Members Association lien and any mortgage recorded prior to the date of recording the claim of lien in favor of the Neighborhood Association, and all such liens may be foreclosed by suit brought in the name of the Neighborhood Association in the same manner as a foreclosure of a mortgage on real property, or as otherwise provided by applicable law. The Neighborhood Association may also sue to recover a money judgment for unpaid assessments without thereby waiving any claim of lien.

In the event a Mortgagee holding a first priority mortgage shall obtain title to a Residence Interest as a result of the foreclosure of such mortgage, or in the event such Mortgagee shall obtain title to a Residence Interest as the result of a conveyance in lieu of foreclosure of such mortgage, such Mortgagee shall not be liable, except to the extent required under the laws of the U.S. Virgin Islands, for that share of the Neighborhood Association expenses or assessments chargeable to the Residence Interest, or the member thereof, which became due prior to the acquisition of title by such Mortgagee.

5. Residence Interest Furnishings of all Two Bedroom Suites, meaning all furniture, appliances, moveable equipment, utensils, carpeting, accessories, and other personal property located within a Two Bedroom Suite Residence Interest, are owned by the Members Association and administered by the Club Manager for the benefit of the Members. A portion of the Residence Interest Furnishings in the Two Bedroom Suites was previously utilized in connection with the operation of the adjacent Ritz-Carlton Hotel. In order to compensate for any reduction in the remaining useful life of such furnishings, Declarant has prefunded a portion of the reserves for the Residence Interest Furnishings that are located in the Two Bedroom Suites.

6. In all other respects the Club Declaration, remains unchanged, and all provisions relating to the Club therein now applies to the current Club Property which is part of the Supplementary Declaration of Condominium that includes the Phase Five (5) Property.

IN WITNESS WHEREOF, the undersigned being the Declarant herein, has caused its seal to be hereunto affixed and these presents to be signed by its officer thereunder duly authorized the day and year first above written.

RC HOTELS (VIRGIN ISLANDS), INC.

WITNESSES:

[Signature]  
[Signature]

By: The Ritz-Carlton Club, St. Thomas, Inc., a U.S. Virgin Islands corporation

By: [Signature]  
Attorney-in-Fact, pursuant to Power of Attorney dated April 29, 2002, and Recorded on May 31, 2002, as Doc. No. 2002002737  
Print Name: JoAnn L. Pierce  
As its: Vice President

STATE OF FLORIDA        )  
COUNTY OF ORANGE    ) ss:

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of November, 2005, by JoAnn L. Pierce as Attorney-in-Fact for The Ritz-Carlton Club, St. Thomas, Inc., a U.S. Virgin Islands corporation, on behalf of RC Hotels (Virgin Islands), Inc., a U.S. Virgin Islands corporation.

WITNESS my hand and seal this 15<sup>th</sup> day of November, 2005.

[Signature]  
Notary Public

Book:  
Pages: 0000  
Doc# 2005012730  
Filed & Recorded  
12/19/2005 8:24AM  
WILMA G. HART SMITH  
RECORDER OF DEEDS  
ST THOMAS/ST JOHN

\$ 9.00  
\$ 6.50  
\$ 25.00

**LUANNE M. MELCHIOR**  
Notary Public  
St. Thomas-St. John, U.S. Virgin Islands  
My Commission Expires: July 27, 2009  
NP-062-05



WITNESSES:

"Organizer"

*Phyllis A. Monsanto*  
Print Name: Phyllis A. Monsanto

THE RITZ-CARLTON CLUB, ST. THOMAS, Inc., a U.S. Virgin Islands corporation

*Luanne Melchior*  
Print Name: LUANNE MELCHIOR

By: *JoAnn L Pierce*  
Print Name: JoAnn L Pierce  
As its: Vice President

STATE OF FLORIDA       )  
COUNTY OF ORANGE    ) ss:

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of November, 2005, by JoAnn L Pierce, as VICE PRESIDENT of The Ritz-Carlton Club, St. Thomas, Inc., a U.S. Virgin Islands corporation, on behalf of said corporation.

WITNESS my hand and seal this 15<sup>th</sup> day of November, 2005.

*Luanne M. Melchior*  
Notary Public

**LUANNE M. MELCHIOR**  
Notary Public  
St. Thomas-St. John, U.S. Virgin Islands  
My Commission Expires: July 27, 2009  
NP-062-05

VAORL535-Legal\Legal Shared\RCC-St. Thomas (205)\RCC-St. Thomas II (Conversion of 24 Hotel Units)\Virgin Islands\Condominium Declaration amds\Supp Dec Amds\Third Am of Club Dec cl 7.19.05.doc

Doc# 2005012789

**EXHIBIT "A"**

**PERCENTAGE OWNERSHIP ALLOCATION**

**Doc# 2005012780**

**Doc# 2005012780**

12/09/2005 8:24AM  
 Official Records of  
 THE RITZ-CARLTON CLUB, ST. THOMAS ST THOMAS/ST JOHN  
 HELICONIA, IRIS, JASMINE, KAVA & LILY BUILDINGS O. HART SMITH  
 SUPPLEMENTARY DECLARATION - EXHIBIT RECORDER OF DEEDS

UNIT NO.	UNIT TYPE	LOCATION	AREA	BASIS	% INTEREST	RESIDENCE INTERESTS	VALUE	% INTEREST	VOTES
1101 2br	End		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
1102 2br	Center		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
1103 2br	Center		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
1201 2br	End		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
1202 2br	Center		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
1203 3br	Center		1912	\$ 1,577,400.00	1.190343%	# 1 - 12	\$ 131,450.00	0.099195%	0.0923
1204 2br	End		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
1301 2br	End		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
1302 2br	Center		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
1303 3br	Center		1912	\$ 1,577,400.00	1.190343%	# 1 - 12	\$ 131,450.00	0.099195%	0.0923
1304 2br	End		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
1401 2br	End		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
1402 2br	Center		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
1403 3br	Center		1912	\$ 1,577,400.00	1.190343%	# 1 - 12	\$ 131,450.00	0.099195%	0.0923
1404 2br	End		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
1501 2br	End		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
1502 2br	Center		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
1503 3br	Center		1912	\$ 1,577,400.00	1.190343%	# 1 - 12	\$ 131,450.00	0.099195%	0.0923
1504 2br	End		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
1601 2br	End		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
1602 2br	Center		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
1603 3br	Center		1912	\$ 1,577,400.00	1.190343%	# 1 - 12	\$ 131,450.00	0.099195%	0.0923
1604 2br	End		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
2101 2br	End		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
2102 3br	Center		1912	\$ 1,577,400.00	1.190343%	# 1 - 12	\$ 131,450.00	0.099195%	0.0923
2103 2br	Center		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
2201 2br	End		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
2202 3br	Center		1912	\$ 1,577,400.00	1.190343%	# 1 - 12	\$ 131,450.00	0.099195%	0.0923
2203 2br	Center		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
2204 2br	End		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
2301 2br	End		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
2302 3br	Center		1912	\$ 1,577,400.00	1.190343%	# 1 - 12	\$ 131,450.00	0.099195%	0.0923
2303 2br	Center		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
2304 2br	End		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
2401 2br	End		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
2402 3br	Center		1912	\$ 1,577,400.00	1.190343%	# 1 - 12	\$ 131,450.00	0.099195%	0.0923
2403 2br	Center		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
2404 2br	End		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
2501 2br	End		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
2502 3br	Center		1912	\$ 1,577,400.00	1.190343%	# 1 - 12	\$ 131,450.00	0.099195%	0.0923
2503 2br	Center		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
2504 2br	End		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
3101 2br	End		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
3102 3br	Center		1912	\$ 1,577,400.00	1.190343%	# 1 - 12	\$ 131,450.00	0.099195%	0.0923
3103 3br	Center		1912	\$ 1,577,400.00	1.190343%	# 1 - 12	\$ 131,450.00	0.099195%	0.0923
3104 2br	End		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
3201 2br	End		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
3202 3br	Center		1912	\$ 1,577,400.00	1.190343%	# 1 - 12	\$ 131,450.00	0.099195%	0.0923
3203 3br	Center		1912	\$ 1,577,400.00	1.190343%	# 1 - 12	\$ 131,450.00	0.099195%	0.0923
3204 2br	End		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
3301 2br	End		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
3302 3br	Center		1912	\$ 1,577,400.00	1.190343%	# 1 - 12	\$ 131,450.00	0.099195%	0.0923
3303 3br	Center		1912	\$ 1,577,400.00	1.190343%	# 1 - 12	\$ 131,450.00	0.099195%	0.0923
3304 2br	End		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
3401 2br	End		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
3402 3br	Center		1912	\$ 1,577,400.00	1.190343%	# 1 - 12	\$ 131,450.00	0.099195%	0.0923
3403 3br	Center		1912	\$ 1,577,400.00	1.190343%	# 1 - 12	\$ 131,450.00	0.099195%	0.0923
3404 2br	End		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
3501 2br	End		1626	\$ 1,341,450.00	1.012289%	# 1 - 12	\$ 111,787.50	0.084357%	0.0785
3502 3br	Center		1912	\$ 1,577,400.00	1.190343%	# 1 - 12	\$ 131,450.00	0.099195%	0.0923
3503 3br	Center		1912	\$ 1,577,400.00	1.190343%	# 1 - 12	\$ 131,450.00	0.099195%	0.0923

Doc # 2005012789

EXHIBIT E

THE RITZ-CARLTON CLUB, ST. THOMAS  
HELICONIA, IRIS, JASMINE, KAVA & LILY BUILDINGS  
SUPPLEMENTARY DECLARATION - EXHIBIT A

UNIT NO.	UNIT TYPE	LOCATION	AREA	BAISIS	% INTEREST	RESIDENCE INTERESTS	VALUE	% INTEREST	VOTES
4101 3br	Center	End	1912	\$ 1,577,400.00	1.1903433%	# 1 - 12	\$ 131,450.00	0.0991955%	0.0923
4102 3br	Center	Center	1912	\$ 1,577,400.00	1.1903433%	# 1 - 12	\$ 131,450.00	0.0991955%	0.0923
4103 3br	Center	Center	1912	\$ 1,577,400.00	1.1903433%	# 1 - 12	\$ 131,450.00	0.0991955%	0.0923
4104 3br	Center	Center	1912	\$ 1,577,400.00	1.1903433%	# 1 - 12	\$ 131,450.00	0.0991955%	0.0923
4105 2br	End	End	1912	\$ 1,341,450.00	1.0122899%	# 1 - 12	\$ 111,787.50	0.0843577%	0.0785
4201 3br	End	End	1912	\$ 1,577,400.00	1.1903433%	# 1 - 12	\$ 131,450.00	0.0991955%	0.0923
4202 3br	Center	Center	1912	\$ 1,577,400.00	1.1903433%	# 1 - 12	\$ 131,450.00	0.0991955%	0.0923
4203 3br	Center	Center	1912	\$ 1,577,400.00	1.1903433%	# 1 - 12	\$ 131,450.00	0.0991955%	0.0923
4304 3br	Center	Center	1912	\$ 1,577,400.00	1.1903433%	# 1 - 12	\$ 131,450.00	0.0991955%	0.0923
4305 2br	End	End	1912	\$ 1,341,450.00	1.0122899%	# 1 - 12	\$ 111,787.50	0.0843577%	0.0785
4401 3br	End	End	1912	\$ 1,577,400.00	1.1903433%	# 1 - 12	\$ 131,450.00	0.0991955%	0.0923
4402 3br	Center	Center	1912	\$ 1,577,400.00	1.1903433%	# 1 - 12	\$ 131,450.00	0.0991955%	0.0923
4403 3br	Center	Center	1912	\$ 1,577,400.00	1.1903433%	# 1 - 12	\$ 131,450.00	0.0991955%	0.0923
4404 3br	Center	Center	1912	\$ 1,577,400.00	1.1903433%	# 1 - 12	\$ 131,450.00	0.0991955%	0.0923
4405 2br	End	End	1912	\$ 1,341,450.00	1.0122899%	# 1 - 12	\$ 111,787.50	0.0843577%	0.0785
5101 2br - Suites	End	End	1552	\$ 1,280,400.00	0.9662202%	# 1 - 12	\$ 106,700.00	0.0805181%	0.0749
5102 2br - Suites	Center	Center	1552	\$ 1,280,400.00	0.9662202%	# 1 - 12	\$ 106,700.00	0.0805181%	0.0749
5103 2br - Suites	End	End	1552	\$ 1,280,400.00	0.9662202%	# 1 - 12	\$ 106,700.00	0.0805181%	0.0749
5201 2br - Suites	End	End	1552	\$ 1,280,400.00	0.9662202%	# 1 - 12	\$ 106,700.00	0.0805181%	0.0749
5202 2br - Suites	Center	Center	1552	\$ 1,280,400.00	0.9662202%	# 1 - 12	\$ 106,700.00	0.0805181%	0.0749
5203 2br - Suites	End	End	1552	\$ 1,280,400.00	0.9662202%	# 1 - 12	\$ 106,700.00	0.0805181%	0.0749
5301 2br - Suites	End	End	1552	\$ 1,280,400.00	0.9662202%	# 1 - 12	\$ 106,700.00	0.0805181%	0.0749
5302 2br - Suites	Center	Center	1552	\$ 1,280,400.00	0.9662202%	# 1 - 12	\$ 106,700.00	0.0805181%	0.0749
5303 2br - Suites	End	End	1552	\$ 1,280,400.00	0.9662202%	# 1 - 12	\$ 106,700.00	0.0805181%	0.0749
5401 2br - Suites	End	End	1552	\$ 1,280,400.00	0.9662202%	# 1 - 12	\$ 106,700.00	0.0805181%	0.0749
5402 2br - Suites	Center	Center	1552	\$ 1,280,400.00	0.9662202%	# 1 - 12	\$ 106,700.00	0.0805181%	0.0749
5403 2br - Suites	End	End	1552	\$ 1,280,400.00	0.9662202%	# 1 - 12	\$ 106,700.00	0.0805181%	0.0749
12 Unit 2-Bedroom Suites			18,624	\$ 15,964,800	11.59464%		\$ 1,280,400	0.96622%	0.8986
45 Unit 3-Bedroom Allocation			73,170	\$ 60,365,250	45.65302%		\$ 5,030,438	3.79609%	3.5304
36 Unit 3-Bedroom Allocation			68,832	\$ 56,786,400	42.85294%		\$ 4,732,200	3.57103%	3.3211
93 Unit Allocation			160,626	\$ 132,516,450	100.00000%		\$ 11,043,038	8.33333%	7.7500

Doc# 2005012780

2005012780

2005012780

12/09/2005 8:24:05  
Official Records of  
ST THOMAS/ST JOHN  
WILMA G. HOOE SMITH  
RECORDER OF DEEDS

**FOURTH AMENDMENT TO  
DECLARATION ESTABLISHING A PLAN FOR CONDOMINIUM  
OWNERSHIP OF PARCEL NOS. 4-2 AND 4-3  
ESTATE NAZARETH, NO. 1 RED HOOK QUARTER,  
ST. THOMAS, U.S. VIRGIN ISLANDS,  
PURSUANT TO CHAPTER 33, TITLE 28 OF  
THE VIRGIN ISLANDS CODE**

Doc# 2005012799

THIS FOURTH AMENDMENT TO DECLARATION is made effective the 15<sup>th</sup> day of November 2005, by RC HOTELS (VIRGIN ISLANDS), INC., a corporation organized and existing under the laws of the U.S. Virgin Islands, whose principal office is situated at Parcel No. 6 Estate Nazareth, St. Thomas, Virgin Islands, hereinafter referred to as the "Declarant":

WHEREAS, by Declaration Establishing a Plan for Condominium Ownership of Parcel Nos. 4-2 and 4-3 Estate Nazareth, No. 1 Red Hook Quarter, St. Thomas, U.S. Virgin Islands, Pursuant to Chapter 33, Title 28 of the Virgin Islands Code made on May 10, 2002, and recorded in the Office of the Recorder of Deeds for St. Thomas and St. John on May 31, 2002, as Document No. 2002002741, as amended by that certain First Amendment recorded on July 5, 2002 in the Office of the Recorder of Deeds for St. Thomas and St. John as Document No. 2002003593 (the "First Amendment"), that certain Second Amendment recorded on December 6, 2002 in the Office of the Recorder of Deeds for St. Thomas and St. John as Document No. 2002006963 (the "Second Amendment") and that certain Third Amendment recorded on January 7, 2004 in the Office of the Recorder of Deeds for St. Thomas and St. John as Document No. 2004000046 (the "Third Amendment") (collectively, together with all corrective instruments and other amendments related thereto, the "Declaration"), the Declarant submitted the land described therein to the provisions of Chapter 33, Title 28, Virgin Islands Code, known also as the "Condominium Act of the Virgin Islands", which condominium is known as Great Bay Condominium;

WHEREAS, Declarant desires to amend the Declaration pursuant to Article 19 thereof in order to submit to the Condominium the land, building and improvements relating to the Phase described herein, containing Building H;

NOW, THEREFORE, pursuant to Article 19 of the Declaration, the Declaration is hereby amended in the following respects only:

1. The Declaration is hereby amended to submit the land described on Exhibit "A" attached hereto, together with Building H and related improvements thereon erected, owned by the Declarant in fee simple absolute (hereinafter, separately sometimes referred to as the Phase Five (5) Property, but together with the previously submitted land and improvements, collectively referred to as the "Property"), to the provisions of Chapter 33, Title 28, Virgin Islands Code, known also as the "Condominium Act of the Virgin Islands". The Phase Five (5) Property being submitted to the Declaration is hereby made subject to such reciprocal easements, covenants and restrictions as may be necessary to implement and further the purposes and intent of that certain Reciprocal Easement

Doc# 2005012799

Agreement by and between Marriott Hotel Services, Inc., a Delaware corporation and RC Hotels (Virgin Islands), Inc., a Delaware corporation recorded in the Official Records of St. Thomas/St. John as Document Number 2002002739 on May 31, 2002, as such instrument has been amended from time to time and, in particular, to reserve unto Declarant for the benefit of all property owned by Declarant adjacent to and in the vicinity of the Phase Five (5) Property and to grant for the benefit of the Condominium and all Owners of any part thereof, and to and for the benefit of all successors and assigns of the foregoing parties, nonexclusive, perpetual, reciprocal utility and access easements for the use, maintenance, repair and replacement of existing facilities, utilities and other improvements subject to and in accordance with the terms and conditions of, and in all respects as if originally set forth in, the Reciprocal Easement Agreement, over, under and upon the parcels designated as Easement "B-1" and as Easement "A-4" in Exhibit "D" attached hereto.

2. Floor Plans of Building H of Phase Five (5) of the Condominium, certified by Brian Moseley and Associates, are set forth in Exhibit "B" attached hereto, including the location and identification numbers for each Residence. Building H will contain twelve (12) Residences, is four (4) stories tall and is constructed of concrete masonry and drywall. The twelve (12) Residences located in Building H shall be designated as "Two Bedroom Suites". The occupancy of Two Bedroom Suites, inclusive of children, shall be limited to six (6) people at a time.

3. The schedule set forth in Exhibit "C" attached hereto includes a list of all Residences, including the Residences in Building H of Phase Five (5) of the Condominium, approximate areas, number of bedrooms, percentage of ownership and votes of each Residence.

4. Exhibit "B", Percentage Ownership Allocation, of the Declaration is hereby replaced by the attached Exhibit "C".

5. As contemplated by Section 19 of the Declaration and in accordance with the Condominium Act of the Virgin Islands, subsequent phases of the Condominium may include Commercial Units in addition to Residences. In anticipation of the creation of a Commercial Unit, the Declaration is hereby amended to include the following provisions:

"Unit" shall mean that part of the Property submitted to the Condominium which is designed for either residential or commercial usage and subject to exclusive ownership by one or more persons.

"Commercial Unit" shall specifically refer to a Unit that is designated for commercial use, subject to any particular covenants, conditions and restrictions that may be imposed thereon in connection with the creation and conveyance of such Commercial Unit.

"Neighborhood Association" shall refer to that certain U.S. Virgin Islands not for profit corporation to be organized for the purpose of owning the Commercial Unit CU-1, the commercial use of which is intended to include the

delivery of food and beverage services to the occupants of Two Bedroom Suite Residences in Phase 5 and Phase 6 of the Condominium. Phase 6 shall consist of Building G located on Remainder Parcel No. 4 Estate Nazareth or such subdivision thereof as Declarant may create.

Each Owner of a Commercial Unit shall be a Member of the Condominium Association, be subject to the Bylaws and Regulations, hold voting rights and have a Percentage Ownership allocation that is established in accordance with the Declaration, and share in the Common Expenses and the Common Surplus. For the limited purpose of establishing membership in the Members Association, the ownership interest of the Owner of a Commercial Unit shall be deemed to be an ownership interest in a Residence. The designation of any such interest in a Commercial Unit as that of a Residence for such limited purposes shall not be construed to limit the use of such Commercial Unit for its intended commercial purposes.

Each Owner of a Commercial Unit shall enjoy the same rights and benefits as other Owners and Members of the Condominium Association, including, but not limited to, the benefit of easements that are held by such Owners or by the Condominium Association on behalf of the Owners. Each Owner of a Commercial Unit shall be entitled to all revenues generated from permitted commercial activities conducted in the Commercial Unit and upon any Limited Common Elements and Common Elements which are appurtenant to a Commercial Unit. Each Commercial Unit shall be subject to the Association's lien and foreclosure rights, and their use shall be subject to reasonable rules and regulations that are promulgated by the Association from time to time in accordance with the Declaration, but none of which shall unreasonably interfere with the ability to utilize any Commercial Unit for its intended purpose. Each Commercial Unit and its Owner shall further be subject to any particular covenants, conditions and restrictions that may be imposed thereon in connection with the creation and conveyance of such Commercial Units.

The boundaries and perimeters of Commercial Units shall be described in the same manner as Residences under the Declaration. Owners of Commercial Units, unlike Residences, shall have the right to install decorations, fixtures and coverings on the interior surfaces of the walls, ceilings and floors. Owners of Commercial Units may make any improvements or alterations to its Unit that do not impair the structural integrity or mechanical systems of, or lessen the support of, any portion of any other Unit. The Condominium Association shall have the same housekeeping, repair, maintenance and replacement responsibilities with respect to the interior furnishings, decorations, fixtures and coverings and with respect to the Common Elements and Limited Common Elements that service or support Commercial Units, including the conduits, wiring, ducts,

plumbing, other facilities for the furnishing of utility services, bearing walls, structural supports and other such items, as it does with respect to Residences.

Except for the Declarant who has the reserved right to do so, an Owner of a Commercial Unit may not subdivide a Commercial Unit into smaller Commercial Units without the approval of the Association. The Declarant or an Owner of a Commercial Unit may also convey a Commercial Unit, or any subdivision thereof in the case of Declarant, to the Association for no or nominal consideration without the consent of any other Owner or the Association, and the Association shall be obligated to accept such conveyance. A Commercial Unit will only be transferred to the Association free of service contracts or other obligations other than as provided in the Declaration, By-laws and Rules and Regulations, all as amended from time to time. A Commercial Unit conveyed to the Association as contemplated herein may only be conveyed by the appropriate officers of the Association to a third party in accordance with the same restrictions, which govern the conveyance, by the Association of portions of the Common Elements. Notwithstanding the rights to generally conduct commercial activities in a Commercial Unit, and to specifically conduct such activities as set forth herein, each Owner of a Commercial Unit has the right, in said Owner's sole and absolute discretion, not to engage in any commercial activity, unless otherwise provided herein.

6. All Owners of Residences that are designated as a Two Bedroom Suite in Phase 5 or Phase 6 shall, in addition to being Members of the Condominium Association, be mandatory members of the Neighborhood Association whose contemplated sole initial purpose shall be to own and operate Commercial Unit CU-1, anticipated to be created in Phase 6, and which may provide certain food and beverage services for the exclusive benefit of the occupants from time to time of the Two Bedroom Suites, whether or not such occupants are Members of the Neighborhood Association. More particularly, and in accordance with the separate organizational and governing documents of the Neighborhood Association, its members shall control the Neighborhood Association and be responsible for all costs and expenses related to the ownership, maintenance and operation of the Commercial Unit owned by it, including but not limited to any services that it may elect to provide.

In addition to the lien in favor of the Members Association against each Residence or Residence Interest, as applicable, for any unpaid assessments and for interest accruing thereon, together with related charges, as set forth in the Declaration, all Owners of Residences that are designated as a Two Bedroom Suite shall, in addition, be subject to a lien in favor of the Neighborhood Association to secure any unpaid assessments, fees or special charges imposed on members of the Neighborhood Association pursuant to the Bylaws of the Neighborhood Association, which shall include, but not be limited to, interest, costs and attorney's fees incurred in the collection of a delinquent payment or enforcement of a lien. The Neighborhood Association lien shall be effective from and after recording a claim of lien in the Public Records of the U.S. Virgin Islands stating the legal description of the Residence (or Residence Interest, as



applicable) the name of the Member of record, the amount claimed to be due and the due dates. The lien shall continue in effect until all sums secured by the lien shall have been fully paid or until such time as is otherwise permitted by law. Such claims of lien shall be signed and verified by an officer of the Neighborhood Association, or by an authorized agent of the Neighborhood Association, e.g., officer or designated employee of the manager retained by the Neighborhood Association. Upon full payment, the party making payment shall be entitled to a recordable satisfaction of lien, to be prepared and recorded at such party's expense. All Neighborhood Association liens shall be subordinate to any Members Association lien and any mortgage recorded prior to the date of recording the claim of lien in favor of the Neighborhood Association, and all such liens may be foreclosed by suit brought in the name of the Neighborhood Association in the same manner as a foreclosure of a mortgage on real property, or as otherwise provided by applicable law. The Neighborhood Association may also sue to recover a money judgment for unpaid assessments without thereby waiving any claim of lien.

In the event a Mortgagee holding a first priority mortgage shall obtain title to a Residence Interest as a result of the foreclosure of such mortgage, or in the event such Mortgagee shall obtain title to a Residence Interest as the result of a conveyance in lieu of foreclosure of such mortgage, such Mortgagee shall not be liable, except to the extent required under the laws of the U.S. Virgin Islands, for that share of the Neighborhood Association expenses or assessments chargeable to the Residence Interest, or the member thereof, which became due prior to the acquisition of title by such Mortgagee.

7. Use of the Commercial Unit in any manner intended to promote, market or otherwise solicit interest in any fractional, timeshare, travel club or other resort residential membership program or project, other than with Declarant's or its successor's or assign's express written consent, which may be denied in their sole and absolute discretion, is hereby expressly prohibited.

8. In all other respects the Declaration remains unchanged, and all provisions relating to the Property now apply to the Property which by this Fourth Amendment has become part of the Condominium.

[signature pages follow]

Book  
Pages  
Doc# 20050127572  
Filed & Recorded  
12/09/2005 at 10:00 AM  
WILLIAM D. HART SMITH  
RECORDER OF DEEDS  
ST. THOMAS/ST. JOHN  
FEB PAGE FEE \$ 24.00  
ATTACHMENT FEE \$ 14.00  
RECORDING FEE \$ 25.00

IN WITNESS WHEREOF, the undersigned, being the Declarant, has caused its seal to be hereunto affixed and these presents to be signed by its officer thereunder duly authorized the day and year first above written.

RC HOTELS (VIRGIN ISLANDS), INC.

WITNESSES:

[Signature]  
[Signature]

By: The Ritz-Carlton Club, St. Thomas, Inc., a U.S. Virgin Islands corporation

By: [Signature]  
Attorney-in-Fact, pursuant to Power of Attorney dated April 29, 2002, and Recorded on May 31, 2002, as Doc. No. 20020027337  
Print Name: John L. Pierce  
As its: Vice President

STATE OF FLORIDA )  
COUNTY OF ORANGE ) ss:

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of November, 2005, by John L. Pierce as Attorney-in-Fact for The Ritz-Carlton Club, St. Thomas, Inc., a U.S. Virgin Islands corporation, on behalf of RC Hotels (Virgin Islands), Inc., a U.S. Virgin Islands corporation.

WITNESS my hand and seal this 15<sup>th</sup> day of November, 2005.

[Signature]  
Notary Public

VIRGIN ISLANDS Legal Shared/RC/CC-St. Thomas (2005)RC/CC-St. Thomas II (Convention of 24 Hotel Units)/Virgin Islands/Code and Supplementaries Declaration signed/Code Dec. Amended/with Am of Code Dec of 11, 05.doc

LUANNE M. MELCHIOR  
Notary Public  
St. Thomas-St. John, U.S. Virgin Islands  
My Commission Expires: July 27, 2009  
NP-062-05

Doc# 200501279

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

Doc# 205512779

**EXHIBIT F**

**A.000084**



**Brian Moseley  
& Associates, Inc.**  
Land Surveyors & Consultants

DWG. No. 1659-5B

DWG. Date: 04-13-05

Parcel No. 4-10  
Estate Nazareth  
No. 1 Red Hook Quarter  
St. Thomas, U.S. Virgin Islands  
Page 1 of 2

OLG No. A9-6SB-T005

**BOUNDARY DESCRIPTION:**

Beginning at a point common to Parcel No. 4-9, Parcel No. 4-2, and Parcel No. 4-10, the line runs

N 75° 45' 47" E a distance of 14.00' along Parcel No. 4-2 to a point, thence

N 75° 45' 47" E a distance of 53', more or less, along Parcel No. 4-2 to a point on the Great Bay Shoreline, thence

Meandering in a southerly direction along the shoreline of Great Bay a distance of 1.50', more or less, to a point, thence

S 35° 56' 27" W a distance of 65', more or less, along Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

S 35° 56' 27" W a distance of 14.44' along Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

S 35° 56' 27" W a distance of 213.21' along Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

N 54° 57' 19" W a distance of 89.35' along Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

S 84° 12' 51" E a distance of 44.53' along Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

S 84° 12' 51" W a distance of 21.52' along Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

N 27° 26' 38" W a distance of 88.24' along R.O.W. Parcel No. 4-4 to a point, thence

N 71° 28' 00" E a distance of 20.24' along Parcel No. 4-2 to a point, thence

N 71° 28' 00" E a distance of 70.59' along Parcel No. 4-2 to a point, thence

Doc# 200512774

**EXHIBIT F**

**A.000085**



**Brian Moseley  
& Associates, Inc.**  
Land Surveyors & Consultants

DWG. No. 1659-5B

DWG. Date: 04-13-05

Parcel No. 4-10  
Estate Nazareth  
No. 1 Red Hook Quarter  
St. Thomas, U.S. Virgin Islands  
Page 2 of 2

N 31° 04' 50" E a distance of 47.63' along Parcel No. 4-2 to a point, thence  
N 51° 47' 39" E a distance of 29.85' along Parcel No. 4-2 to a point, thence  
S 73° 58' 54" E a distance of 55.87' along Parcel No. 4-2 to a point, thence  
N 82° 39' 36" E a distance of 22.23' along Parcel No. 4-2 to a point, thence  
N 07° 20' 24" W a distance of 15.87' along Parcel No. 4-2 to a point, thence  
N 68° 22' 38" E a distance of 62.40' along Parcel No. 4-9 to a point, thence  
Northerly an arc distance of 33.60' on a curve to the right having a radius of 232.00' along Parcel  
No. 4-9 to a point, thence  
N 13° 19' 32" W a distance of 89.99' along Parcel No. 4-9 to the point of origin.

The bearings are correlated with A9-624-T003.

The area is 1.135 acres.

Brian Moseley and Associates, Inc.

*Brian M. Moseley*  
Brian M. Moseley, PLS #502-LS



BOOK 2885012797

**EXHIBIT "B"**  
**FLOOR PLANS**

Doc# 2005912799

**EXHIBIT F**

**A.000087**

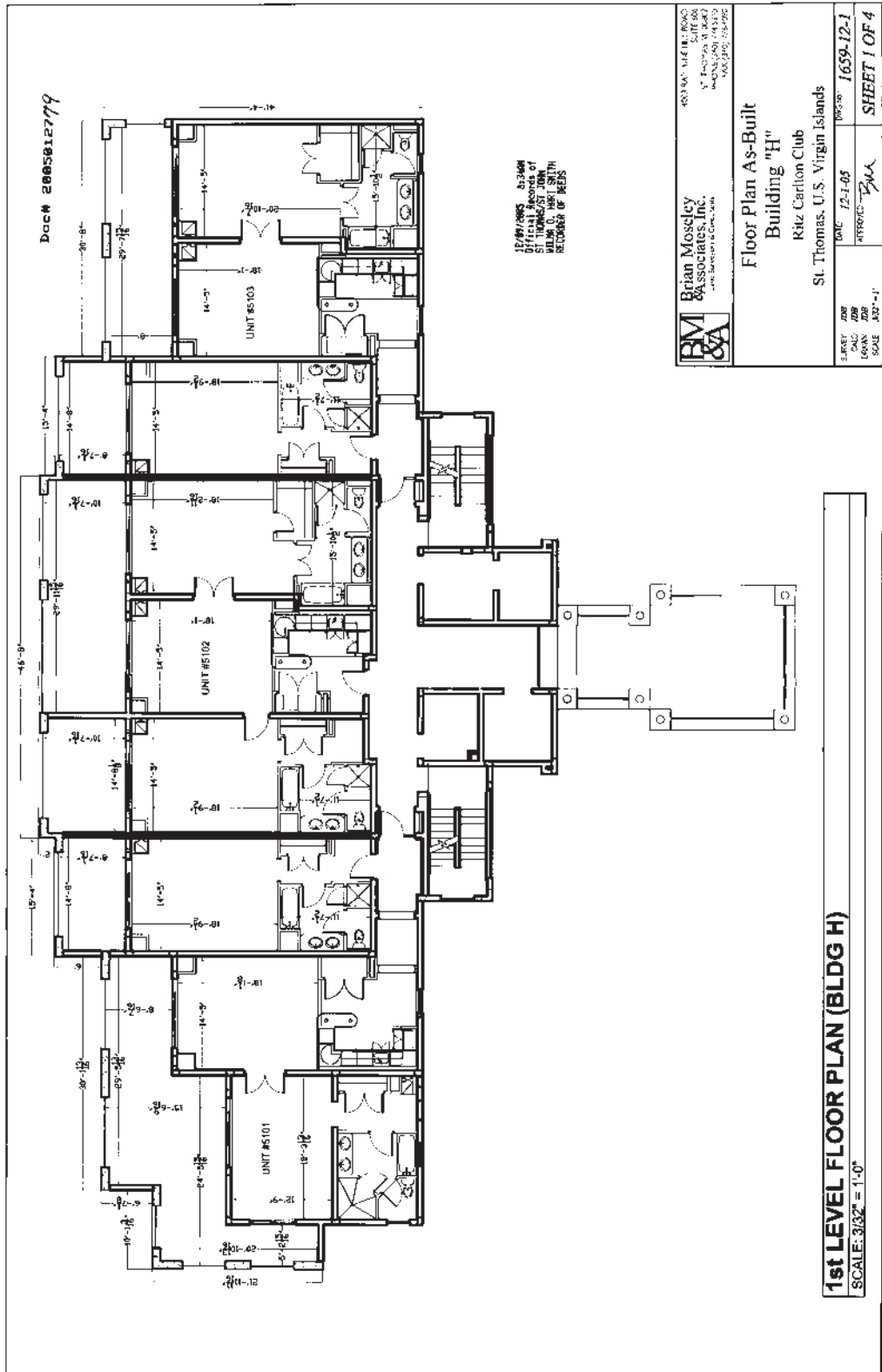
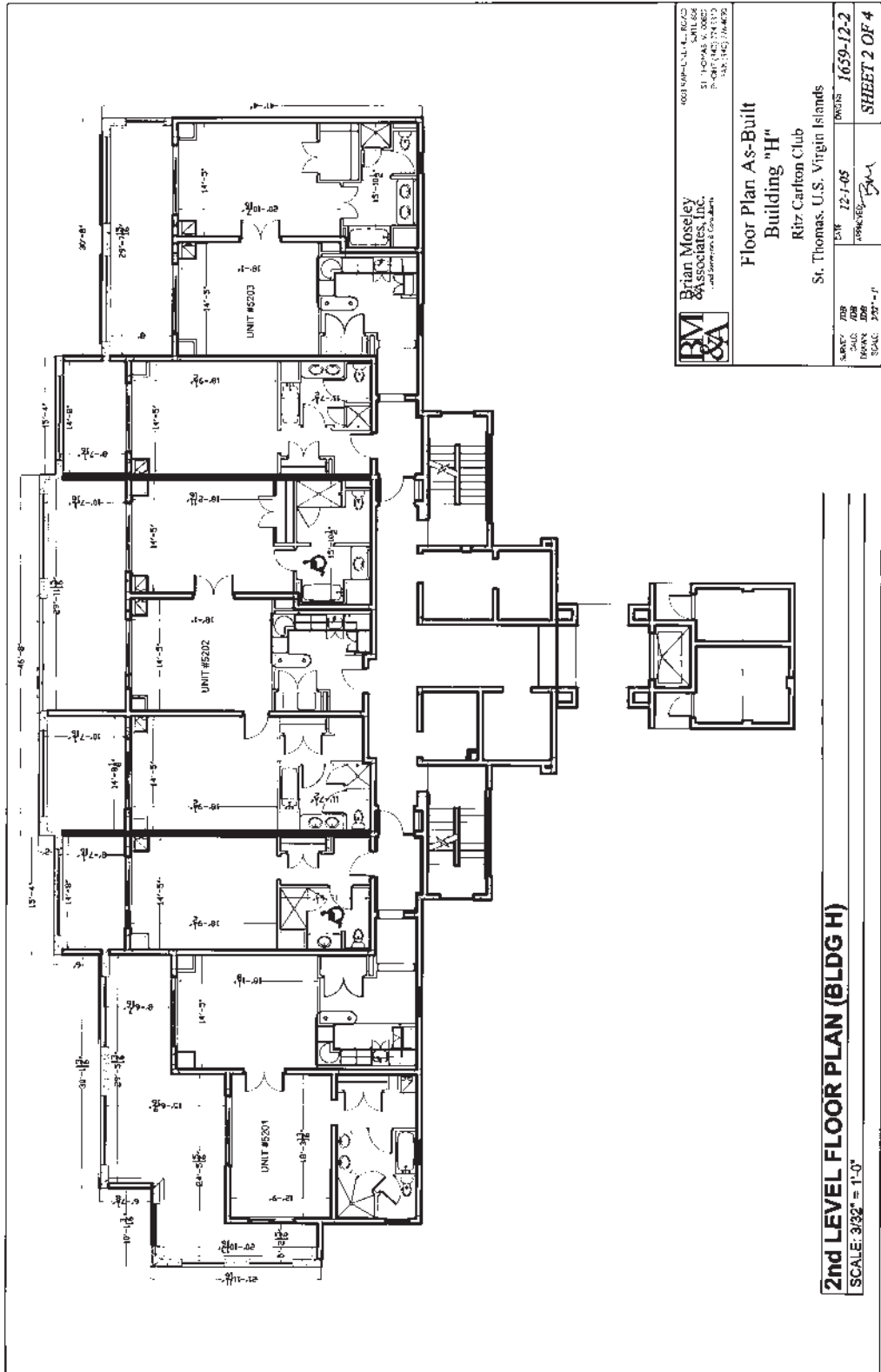


EXHIBIT F

A.000088



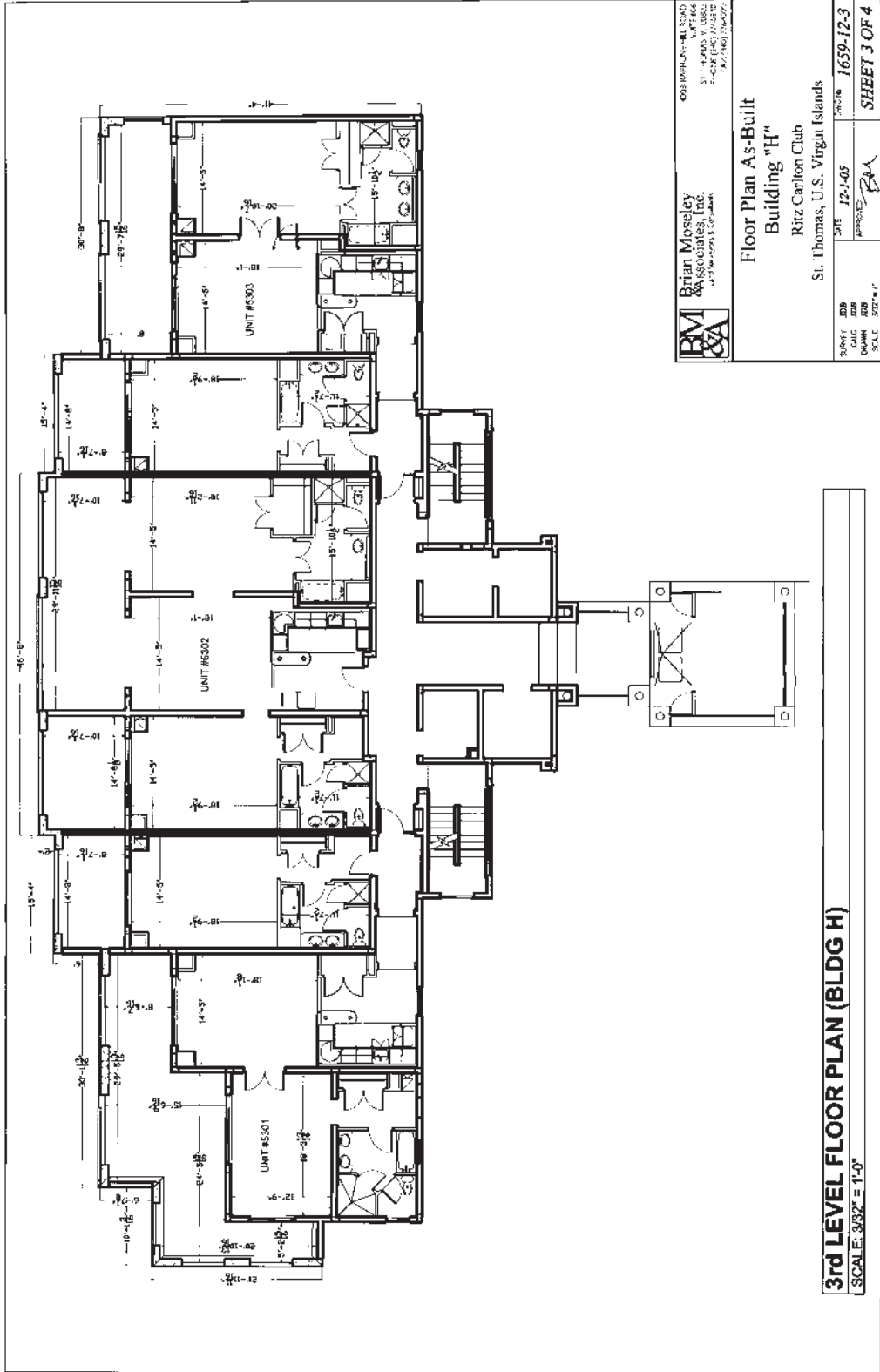

**Brian Moseley & Associates, Inc.**  
 4031 W. H. L. ROAD  
 ST. THOMAS, V. 00802  
 PHONE: (407) 774-1110  
 FAX: (407) 774-6726

**Floor Plan As-Built**  
**Building "H"**  
 Ritz Carlton Club  
 St. Thomas, U.S. Virgin Islands  
 DATE: 12-1-05  
 DRAWN BY: [Signature]  
 CHECKED BY: [Signature]  
 SCALE: 3/32" = 1'-0"  
 DWG NO: 1659-12-2  
 SHEET 2 OF 4

**2nd LEVEL FLOOR PLAN (BLDG H)**  
 SCALE: 3/32" = 1'-0"

EXHIBIT F





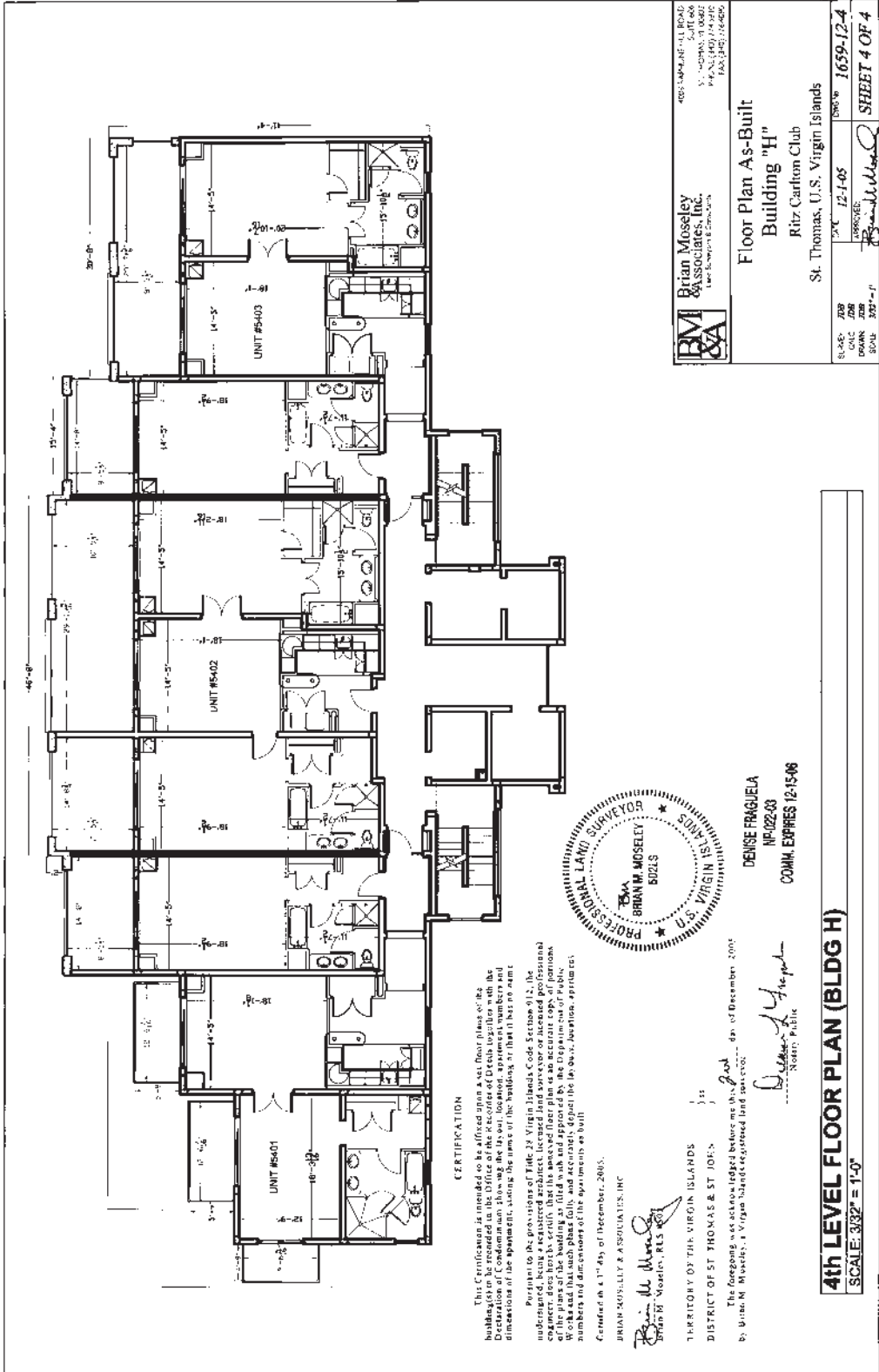
**Brian Moseley & Associates, Inc.**  
 ARCHITECTS & ENGINEERS  
 403 PARKWAY #11200  
 ST. THOMAS, VI  
 P.O. BOX 175818  
 ST. THOMAS, VI 01102

**Floor Plan As-Built  
 Building "H"**  
 Ritz Carlton Club  
 St. Thomas, U.S. Virgin Islands

DATE: 12-1-05  
 PROJECT: BAA  
 SHEET NO: 1659-12-3  
 SHEET 3 OF 4

**3rd LEVEL FLOOR PLAN (BLDG H)**  
 SCALE: 3/32" = 1'-0"

EXHIBIT F



**CERTIFICATION**

This Certification is intended to be affixed upon a set floor plan of the building(s) to be recorded in the Office of the Registrar of Deeds together with the Declaration of Condominium showing the layout, location, apartment numbers and dimensions of the apartment, stating the name of the building or that it has no name.

Pursuant to the provisions of Title 28, Virginia Code Section 41.2, the undersigned, being a registered architect, licensed land surveyor or licensed professional engineer, hereby certifies that the foregoing is a true and correct copy of the original works and that such plans fully and accurately depict the layout, location, apartment numbers and dimensions of the apartments as built.

Certified on 4<sup>th</sup> day of December, 2005.

BRIAN MOSELEY & ASSOCIATES, INC.  
 Brian W. Moseley, P.E., P.L.S.

TERRITORY OF THE VIRGIN ISLANDS  
 DISTRICT OF ST. THOMAS & ST. JOHN  
 115

The foregoing is a true and correct copy of the said  
 by: Brian W. Moseley, a Virginia-licensed registered land surveyor. dn, 4th of December, 2005.

*Brian W. Moseley*  
 Brian W. Moseley, P.E., P.L.S.  
 Notary Public



DENSE FRAGUELA  
 NC1022-03  
 COMM. EXPIRES 12-15-06

**4th LEVEL FLOOR PLAN (BLDG H)**  
 SCALE: 3/32" = 1'-0"

	<b>Brian Moseley &amp; Associates, Inc.</b> Land Surveyors & Engineers 4855 HAMPSHIRE LANE ROAD SUITE 200, ST. THOMAS, VI 00802 P.O. BOX 1407, ST. JOHN VI 00851 FAX: (340) 774-6006	
	<b>Floor Plan As-Built</b> <b>Building "H"</b> Ritz Carlton Club St. Thomas, U.S. Virgin Islands	DATE: 12-1-05 DRAWN: [Signature] CHECKED: [Signature] SCALE: 3/32" = 1'-0"
		SHEET 4 OF 4

EXHIBIT F

A.000091

**EXHIBIT "C"**  
**PERCENTAGE OWNERSHIP ALLOCATION**

Doc# 28581277

**EXHIBIT F**

**A.000092**

THE RITZ-CARLTON CLUB ST. THOMAS  
 MELICOM, RES. LAMARKE, KAYA & LILY BUILDINGS  
 CONDOMINIUM DECLARATION - EXHIBIT C

UNIT NO.	ENCLOSURE	ADJACENT	AREA	VALUE	%INTEREST	YIELD
1101	2br	End	1826 \$ 1,341,450.00	1.012289%	0.94143	
1102	2br	Center	1826 \$ 1,341,450.00	1.012289%	0.94143	
1103	2br	Center	1826 \$ 1,341,450.00	1.012289%	0.94143	
1209	2br	End	1826 \$ 1,341,450.00	1.012289%	0.94143	
1212	2br	Center	1826 \$ 1,341,450.00	1.012289%	0.94143	
1213	3br	Center	1912 \$ 1,577,400.00	1.190343%	1.10702	
1204	2br	End	1826 \$ 1,341,450.00	1.012289%	0.94143	
1301	2br	End	1826 \$ 1,341,450.00	1.012289%	0.94143	
1302	3br	Center	1826 \$ 1,341,450.00	1.012289%	0.94143	
1305	3br	Center	1912 \$ 1,577,400.00	1.190343%	1.10702	
1304	2br	End	1826 \$ 1,341,450.00	1.012289%	0.94143	
1401	2br	End	1826 \$ 1,341,450.00	1.012289%	0.94143	
1402	2br	Center	1826 \$ 1,341,450.00	1.012289%	0.94143	
1403	3br	Center	1912 \$ 1,577,400.00	1.190343%	1.10702	
1404	2br	End	1826 \$ 1,341,450.00	1.012289%	0.94143	
1601	2br	End	1826 \$ 1,341,450.00	1.012289%	0.94143	
1602	2br	Center	1826 \$ 1,341,450.00	1.012289%	0.94143	
1603	3br	Center	1912 \$ 1,577,400.00	1.190343%	1.10702	
1604	2br	End	1826 \$ 1,341,450.00	1.012289%	0.94143	
1801	2br	End	1826 \$ 1,341,450.00	1.012289%	0.94143	
1802	2br	Center	1826 \$ 1,341,450.00	1.012289%	0.94143	
1803	3br	Center	1912 \$ 1,577,400.00	1.190343%	1.10702	
1804	2br	End	1826 \$ 1,341,450.00	1.012289%	0.94143	
2101	2br	End	1826 \$ 1,341,450.00	1.012289%	0.94143	
2102	3br	Center	1912 \$ 1,577,400.00	1.190343%	1.10702	
2103	2br	Center	1826 \$ 1,341,450.00	1.012289%	0.94143	
2201	2br	End	1826 \$ 1,341,450.00	1.012289%	0.94143	
2202	3br	Center	1912 \$ 1,577,400.00	1.190343%	1.10702	
2203	2br	Center	1826 \$ 1,341,450.00	1.012289%	0.94143	
2204	2br	End	1826 \$ 1,341,450.00	1.012289%	0.94143	
2301	2br	End	1826 \$ 1,341,450.00	1.012289%	0.94143	
2302	3br	Center	1912 \$ 1,577,400.00	1.190343%	1.10702	
2303	2br	Center	1826 \$ 1,341,450.00	1.012289%	0.94143	
2304	2br	End	1826 \$ 1,341,450.00	1.012289%	0.94143	
2401	2br	End	1826 \$ 1,341,450.00	1.012289%	0.94143	
2402	3br	Center	1912 \$ 1,577,400.00	1.190343%	1.10702	
2403	2br	Center	1826 \$ 1,341,450.00	1.012289%	0.94143	
2404	2br	End	1826 \$ 1,341,450.00	1.012289%	0.94143	
2601	2br	End	1826 \$ 1,341,450.00	1.012289%	0.94143	
2502	2br	Center	1912 \$ 1,577,400.00	1.190343%	1.10702	
2503	2br	Center	1826 \$ 1,341,450.00	1.012289%	0.94143	
2504	2br	End	1826 \$ 1,341,450.00	1.012289%	0.94143	
3101	2br	End	1826 \$ 1,341,450.00	1.012289%	0.94143	
3102	3br	Center	1912 \$ 1,577,400.00	1.190343%	1.10702	
3103	3br	Center	1912 \$ 1,577,400.00	1.190343%	1.10702	
3104	2br	End	1826 \$ 1,341,450.00	1.012289%	0.94143	
3201	2br	End	1826 \$ 1,341,450.00	1.012289%	0.94143	
3202	3br	Center	1912 \$ 1,577,400.00	1.190343%	1.10702	
3203	3br	Center	1912 \$ 1,577,400.00	1.190343%	1.10702	
3204	2br	End	1826 \$ 1,341,450.00	1.012289%	0.94143	
3301	2br	End	1826 \$ 1,341,450.00	1.012289%	0.94143	
3302	3br	Center	1912 \$ 1,577,400.00	1.190343%	1.10702	
3303	3br	Center	1912 \$ 1,577,400.00	1.190343%	1.10702	
3304	2br	End	1826 \$ 1,341,450.00	1.012289%	0.94143	
3401	2br	End	1826 \$ 1,341,450.00	1.012289%	0.94143	
3402	3br	Center	1912 \$ 1,577,400.00	1.190343%	1.10702	
3403	3br	Center	1912 \$ 1,577,400.00	1.190343%	1.10702	
3404	2br	End	1826 \$ 1,341,450.00	1.012289%	0.94143	
3501	2br	End	1826 \$ 1,341,450.00	1.012289%	0.94143	
3602	3br	Center	1912 \$ 1,577,400.00	1.190343%	1.10702	
3603	3br	Center	1912 \$ 1,577,400.00	1.190343%	1.10702	

Doc# 2885812779

**EXHIBIT "D"**  
**EASEMENT B-1**  
**AND EASEMENT A-4**

Doc # 2005012719

**EXHIBIT F**

**A.000094**

12/07/2005 8:34AM  
Official Records of  
ST. THOMAS, ST. JOHN  
WALTER R. HART SWITH  
REGISTRAR OF RECORDS



**Brian Moseley  
& Associates, Inc.**  
Land Surveyors & Consultants

DWG. No. 1659-5B

DWG. Date: 04-13-05

Easement "B-1"  
over Parcel No. 4-10  
Estate Nazareth  
No. 1 Red Hook Quarter  
St. Thomas, U.S. Virgin Islands

OLG No. \_\_\_\_\_

**BOUNDARY DESCRIPTION:**

Beginning at a point common to Parcel No. 4-9, Parcel No. 4-2, Parcel No. 4-10, and Easement "B-1", the line runs

N 75° 45' 47" E a distance of 14.00' over Parcel No. 4-10 to a point, thence

S 13° 19' 32" E a distance of 50.21' over Parcel No. 4-10 to a point, thence

Southeasterly an arc distance of 99.27' on a curve to the left having a radius of 218.00' over Parcel No. 4-10 to a point, thence

S 35° 56' 27" W a distance of 14.44' along Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

Northeasterly an arc distance of 75.70' on a curve to the right having a radius of 232.00' over Parcel No. 4-10 to a point, thence

Northerly an arc distance of 33.60' on a curve to the right having a radius of 232.00' along Parcel No. 4-9 to a point, thence

N 13° 19' 32" W a distance of 89.99' along Parcel No. 4-9 to the point of origin.

The bearings are correlated with A9-624-7003.

The area is 2,721 Square Feet, more or less.

Brian Moseley and Associates, Inc.

*Brian M. Moseley*  
Brian M. Moseley, PLS #502-LS



Doc# 20051270

12/09/2005 8:34AM  
Official Records of  
ST. THOMAS/ST. JOHN  
WILM. O. HART SMITH  
RECORDER OF DEEDS



**Brian Moseley  
& Associates, Inc.**  
Land Surveyors & Consultants

DWG. No. 1659-5B

DWG. Date: 04-13-05

Utility Easement "A-4"  
over Parcel No. 4-10  
Estate Nazareth  
No. 1 Red Hook Quarter  
St. Thomas, U.S. Virgin Islands

OLG No. \_\_\_\_\_

**BOUNDARY DESCRIPTION:**

Beginning at a point common to R.O.W. Parcel No. 4-4, Parcel No. 4-2, Parcel No. 4-10, and Utility Easement "A-4", the line runs

N 71° 28' 00" E a distance of 20.24' along Parcel No. 4-2 to a point, thence

S 27° 26' 38" E a distance of 93.05' over Parcel No. 4-10 to a point, thence

S 84° 12' 51" W a distance of 21.52' along Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

N 27° 26' 38" W a distance of 88.24' along R.O.W. Parcel No. 4-4 to the point of origin.

The bearings are correlated with A9-624-T003.

The area is 1,812 Square Feet, more or less.

Brian Moseley and Associates, Inc.

*Brian M. Moseley*  
Brian M. Moseley, PLS #502-LS



Doc # 2885812779

Doc# 2006007166  
# Pages 2  
07/18/2006 3:10PM  
Official Records of  
ST THOMAS/ST JOHN  
WILMA O. HART SMITH  
RECORDER OF DEEDS  
Fees \$27.00

This instrument prepared by  
and return to:  
Mark S. Lieblich, Esq.  
Marriott Ownership Resorts, Inc.  
6649 Westwood Boulevard  
Orlando, Florida 32821-6090  
(407) 206-6000

**FIFTH AMENDMENT TO  
SUPPLEMENTARY DECLARATION OF CONDOMINIUM  
FOR THE CLUB AT GREAT BAY CONDOMINIUM ST. THOMAS,  
U.S. VIRGIN ISLANDS**

THIS FIFTH AMENDMENT TO SUPPLEMENTARY DECLARATION FOR THE CLUB AT GREAT BAY CONDOMINIUM is made effective the 11th day of June, 2006, by RC HOTELS (VIRGIN ISLANDS), INC., a corporation organized and existing under the laws of the U.S. Virgin Islands, whose principal office is situated at Parcel No. 6 Estate Nazareth, St. Thomas, Virgin Islands, hereinafter referred to as the "Declarant":

WHEREAS, by that certain Declaration Establishing a Plan for Condominium Ownership of Parcel Nos. 4-2 and 4-3 Estate Nazareth, No. 1 Red Hook Quarter, St. Thomas, United States Virgin Islands, recorded on May 31, 2002, in the Official Records of St. Thomas and St. John, with Document No. 2002002741, as subsequently expanded and amended, the Declarant submitted the land described therein to the provisions of Chapter 33, Title 28, Virgin Islands Code, known also as the "Condominium Act of the Virgin Islands", which condominium is known as Great Bay Condominium; and

WHEREAS, the Declaration was supplemented by that certain Supplementary Declaration of Condominium for the Club at Great Bay Condominium, recorded on May 31, 2002, in the Official Records of St. Thomas and St. John, with Document No. 2002002742, as subsequently expanded and amended (collectively, the "Supplementary Declaration") and which Supplementary Declaration created the Residence Interests in the Condominium;

WHEREAS, Declarant desires to amend the Supplementary Declaration pursuant to Article 16 thereof;

NOW, THEREFORE, pursuant to Article 15 of the Supplementary Declaration, the Supplementary Declaration is hereby amended in the following respects only:

1. Section 7.5 is hereby amended to confirm and, further, to expressly provide that notwithstanding anything in this Supplementary Declaration to the contrary, the board of directors of the Members Association shall have the power to make material alterations or substantial additions to the Common Elements and Limited Common Elements of the Condominium from time to time without the approval of the Members.



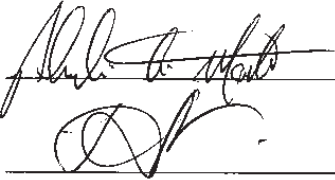
2. The Supplementary Declaration is further amended hereby to confirm and, further, to expressly provide that the board of directors of the Members Association shall have the power to enter into leases of the Common Elements from time to time without the approval of the Members.

3. In all other respects the Supplementary Declaration remains unchanged.

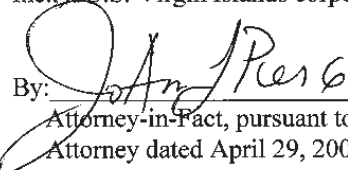
IN WITNESS WHEREOF, the undersigned being the Declarant herein, has caused its seal to be hereunto affixed and these presents to be signed by its officer thereunder duly authorized the day and year first above written.

RC HOTELS (VIRGIN ISLANDS), INC.

WITNESSES:

  
\_\_\_\_\_

By: The Ritz-Carlton Club, St. Thomas, Inc., a U.S. Virgin Islands corporation

By:   
Attorney-in-Fact, pursuant to Power of Attorney dated April 29, 2002, and Recorded on May 31, 2002, as Doc. No. 2002002737  
Print Name: JoAnn L. Pierce  
As its: Vice President

TERRITORY OF THE VIRGIN ISLANDS )  
DIVISION OF ST. THOMAS & ST. JOHN ) ss:

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of June, 2006, by JoAnn L. Pierce as Attorney-in-Fact for The Ritz-Carlton Club, St. Thomas, Inc., a U.S. Virgin Islands corporation, on behalf of RC Hotels (Virgin Islands), Inc., a U.S. Virgin Islands corporation.

WITNESS my hand and seal this 6<sup>th</sup> day of June, 2006.

  
\_\_\_\_\_

Notary Public  
Fairly ~~Andore-Smith~~, Notary Public  
My Commission Exp. September 16, 2009  
NP-095-05  
District of St. Thomas/St. John

VA\ORL535-Legal\Legal Shared\RCC-St. Thomas (205)\RCC-St. Thomas II (Conversion of 24 Hotel Units)\Virgin Islands\Condo and Supplementary Declaration amds\Supp Dec Amds\Fifth Amend of Club Declaration\Fifth Am of Club Dec 6.6.06.doc

FINAL

11-3-21

## HODGE & HODGE

November 3, 2021

Abbey Chung, President  
Board of Directors  
Great Bay Condominium Owners Association, Inc.  
c/o W. Mark Wilczynski, Esq.  
Via Email to mwilczynski@usvilaw.com

Re: Invoice for Maintenance Assessments Upon Neighborhood Association Members for CU-1

Dear Ms. Chung:

We represent The Neighborhood Association, Inc. ("NA"). On behalf of our client and its members, we write now concerning the Invoices you sent to NA's owners, together with a memorandum dated October 22, 2021, purporting to explain the basis for your assessment of such charges for the years 2017 through 2021, and your announced intention to obstruct access to their suites in the event they do not pay as demanded.

As you are aware, Great Bay has previously assessed these same amounts to NA for the same years, and NA had rejected those assessments as inappropriate and without legal basis. (I enclose copies of representative correspondence with those objections). Of course, you are also aware that you have filed and have pending a lawsuit against NA, claiming that the deed transferring title to this commercial unit from NA to Great Bay, fully executed and duly recorded, is somehow invalid and ineffective to transfer that title to you. In addition, you are well aware that there has been no determination by the Court that your claim about title has any merit. Under these circumstances, it is profoundly disrespectful to the Court that you would initiate this self-help campaign, without awaiting the Court's rulings on the merits of your suit.

Nevertheless, you have now made a complete turnabout on your judicial claim and now state to NA's owners that it is a matter of no moment who owns CU-1, as you have assumed the power to single out for assessment of these dues, the NA suite owners alone, even as you stand as the record owner of title to the unit.

In response to the new assessments, issued by Great Bay directly to NA owners, we have reviewed the basis for this targeted assessment, as expressed in your October 22nd memo, and we find the purported legal foundation for these assessments in the documents completely lacking. Indeed, the very documents upon which you rely in your memo to NA owners actually mandate the opposite conclusion. The truth is that the obligation to pay or assume those

EXHIBIT H

A.000099

assessments is yours as owner of the Unit, or is an obligation you must allocate among all of Great Bay's owners as a common charge.

Specifically, the VI code, in Title 28 Virgin Islands Section 909, provides that "[t]he common profits of the property shall be distributed among, and *the common expenses shall be charged to, the apartment owners according to the percentage of the undivided interest in the common areas and facilities.*" Those "undivided interests" are required to be the percentages expressed in the declaration. (Id at Section 905(a). Therefore, Great Bay is legally required to allocate the common expenses associated with CU-1 among all the owners, in accord with their percentage interests in the common areas and facilities, as stated in the Declaration. In the alternative, as the owner of the unit, Great Bay is required to pay those assessments itself. It is not free to single out for discriminatory assessment only those owners who are members of NA, the former owner of CU-1.

By virtue of your improper assessment of these charges to NA suite owners, coupled with your threat to exclude them from use and occupancy of their suites as a penalty if they fail to comply with your improper demand, we now call upon you to immediately rescind both your invoices and your memorandum to NA owners, and to do so within 24 hours of this demand. The related email memorandum to GBCOA members of October 22, 2021, should also be rescinded. In case of your failure to rectify your improper demand and threat within that time, our client is prepared to take all appropriate legal steps to protect the interests of its members.

Sincerely,

*Maria T Hodge*

Maria Tankenson Hodge

Cc: The Neighborhood Association, Inc.

EXHIBIT H

A.000100

## HODGE & HODGE

November 28, 2017

RC Hotels (Virgin Islands), Inc.  
Attention: Law Department  
6649 Westwood Boulevard, 3<sup>rd</sup> Floor  
Orlando, Florida 32821  
Via Certified Mail, Return Receipt Requested  
With copies by email to [Stephanie.Butera@mvmc.com](mailto:Stephanie.Butera@mvmc.com) and John.Hearns @marriott.com

Re: Conveyance of Title to Unit CU-1 by Neighborhood Association, Inc. to Great Bay  
Condominium Owners Association, Inc.

Dear Friends:

I have been asked by The Neighborhood Association, Inc., ("NA") to reply to your email of November 7, 2017, advising that the Management Company is not involved in the discussions between NA and Great Bay Condominium Owners Association, Inc ("GBCOA") regarding transfer of title to the CU-1 Unit ("the Unit"), and that the Management Company will not be engaging in any actions involving resolution of any disagreement between the two Association's boards related to that matter. You further indicate that you stand ready to continue to perform duties related to the ongoing operation of the CU-1, as well as management and governance associated with NA.

Your position is noted and acknowledged, although, as you know, a contrary description of the history of those discussions and negotiations was set forth in the email from Sal Cutrona dated November 2, to which you were replying in your November 7 email.

For the sake of good order, NA wishes to inform you that as it has tendered and delivered an executed deed to Unit CU-1, dated September 20, 2017, conveying title to the Unit to GBCOA, there is no further management of the Unit required on behalf of NA.

That GBCOA has indicated an intention to reject the tender of title does not change the status of ownership, as that transfer is now legally complete.

As you are aware by virtue of having received copies of communications between them, negotiations between NA and GBCOA about a possible voluntary conveyance of CU-1 subject to certain conditions did not result in an agreement. Thereafter, NA elected to tender title to the Unit to GBCOA, without conditions, in reliance upon the terms of the governing legal

ATTORNEYS AT LAW  
1340 TAARNEBERG, ST. THOMAS, VIRGIN ISLANDS  
PHONE: 340-774-6845 FAX: 340-776-8900  
EMAIL: MARIA@HODGELAWVI.COM

EXHIBIT I

A.000101

documents of the two entities. That action by NA effectively conveyed title to GBCOA, notwithstanding the lack of voluntary acceptance of the tender.

I will briefly summarize the basis for this determination.

CU-1 is a lawfully created condominium unit in a condominium complex known as "Great Bay Condominium", designated a commercial unit rather than a residential unit, in the overall complex. Great Bay was duly established by recording a declaration of condominium, in accord with VI law, on May 31, 2002, with various subsequent amendments and supplements. Your company, RC Hotels (Virgin Islands) Inc, was the Declarant that filed the declaration and amendments in question. The separate condominium designated CU-1 was created by the Fifth Amendment to the original Declaration, dated June 6, 2006. Certain requirements and provisions applicable to CU-1 were also contained in a Fourth Amendment to the Declaration and a Fourth Amendment to the Supplemental Declaration, also dated June 6, 2006.

The condominium documents that create CU-1, and the corporate documents that specify the authority of NA to act and administer that commercial condominium unit, specifically grant to the Association the authority to convey real property. In particular, the Articles of Incorporation of NA, as is customary with Virgin Islands corporations, expressly recognize the power to "own and convey real and personal property." (Articles of Incorporation, Article IV). As CU-1 is a condominium constituting real property, NA has the power to convey title to that unit.

Further, NA's Bylaws provide the board of directors of NA has the power to convey real property without the need to obtain its members' approval, because there is no provision in the Articles or Bylaws that indicates that power is to be exercised exclusively by the members. (Bylaws, Article IV(3)(1)). Therefore, NA plainly had and has the power to convey title to Unit CU-1 if the board of directors elected to do so. In this case, that action was authorized by the NA board, and by vote of a supermajority of its members.

Further, GBCOA has both the authority and the obligation to accept title from NA to CU-1. That prospect was expressly envisioned in the creation of the Unit. The power to accept title to property is conferred on GBCOA by its own Articles of Incorporation, a power that is almost universally enjoyed by corporations. However, beyond that general authority, the Declaration of Condominium for GBCOA provides, in the same Fourth Amendment that created Unit CU-1, that the "...Owner of a Commercial Unit may also convey a Commercial Unit...to the Association [GBCOA] for no or nominal consideration *without the consent of any Owner or the Association, and the Association shall be obligated to accept such conveyance....*" (Emphasis added.) Those terms were adopted and set forth by RC Hotels (Virgin Islands), Inc., when the Declaration was executed and recorded with the Recorder of Deeds. Of course, RC Hotels was also a party to each of the subsequent amendments to the Declaration, including the Fourth Amendment, and therefore, we do not envision any dispute about recognition of the governing

terms of the Declaration as amended, including those quoted above, which provide for conveyance of title to the Unit to GBCOA, with or without its consent.

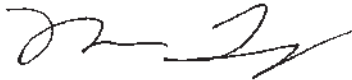
The same provision contains a condition that a Commercial Unit "will only be transferred to the Association free of service contracts or other obligations other than as provided in the Declaration, By-laws and Rules and Regulations, all as amended from time to time..." (Id, p. 4) In this instance, the deed was tendered with the only previous service contract having been terminated, and the previously applicable deed restriction having been formally waived, leaving no relevant obligations outstanding. Accordingly, that condition in the Fourth Amendment for this conveyance was satisfied.

Thus, based upon the applicable corporate and condominium documents, NA had the legal authority to transfer title of the Unit to GBCOA, and GBCOA had the legal obligation to accept such title. The effect of this is that GBCOA is now the owner of Unit CU-1.

It would follow that the role of the Management Company in respect to duties involving the Unit would now be a matter between you and GBCOA, as owner of the Unit. There remain no duties to be performed on behalf of NA in connection with the Unit. We suggest that it would be appropriate, under the circumstances, for you to confer with GBCOA, as the current owner of the Unit, as to further management thereof.

If you have any questions about this, please advise. Otherwise, we look forward to your cooperation with the foregoing understanding, under the applicable corporate and condominium documents.

Sincerely,



Maria Tankenson Hodge

Cc: Sal Cutrona, President, NA

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS and ST. JOHN  
\*\*\*\*\*

GREAT BAY CONDOMINIUM OWNERS ASSOCIATION	)	
	)	
Plaintiff	)	Case No. ST-18-CV-768
	)	
vs.	)	ACTION FOR DAMAGES
	)	
THE NEIGHBORHOOD ASSOCIATION, INC.	)	
	)	
Defendant.	)	
_____	)	

**NOTICE OF FILING EXHIBIT D TO AFFIRMATION OF SALVATORE CUTRONA**

COMES NOW, Defendant, The Neighborhood Association, Inc., by and through undersigned counsel, Hodge & Hodge, by Maria Tankenson Hodge, Esq., and gives notice of the filing of the attached Exhibit D to the Affirmation of Salvatore Cutrona, filed in support of the Motion for Temporary Restraining Order and Preliminary Injunction, for the reason that Exhibit D was apparently too large for the court’s system to accept, and the same has now been rescanned and meets the size limitations of the court’s electronic filing system.

**Respectfully submitted,**

**HODGE & HODGE**

Dated: November 12, 2021

By: /s/ Maria T. Hodge  
Maria Tankenson Hodge, Esq.  
1340 Taarneberg  
St. Thomas, V.I. 00802  
Tel.: (340) 774-6845 || fax.: (340) 776-8900  
[maria@hodgelawvi.com](mailto:maria@hodgelawvi.com)  
*Attorney for Defendant, The Neighborhood Association, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 12th day of November, 2021, I caused a true and exact copy of the foregoing to be served via the Court's electronic filing system, with a copy sent via e-mail to the following:

W. Mark Wilczynski, Esq.  
Palm Passage, Suite C20-22 || P.O. Box 1150  
St. Thomas, US Virgin Islands, 00801  
*Attorney for Plaintiff, Great Bay Condominium Owners Association*  
[mark@usvilaw.com](mailto:mark@usvilaw.com)

/s/ Maria T. Hodge \_\_\_\_\_



IN THE SUPERIOR COURT  
OF THE VIRGIN ISLANDS

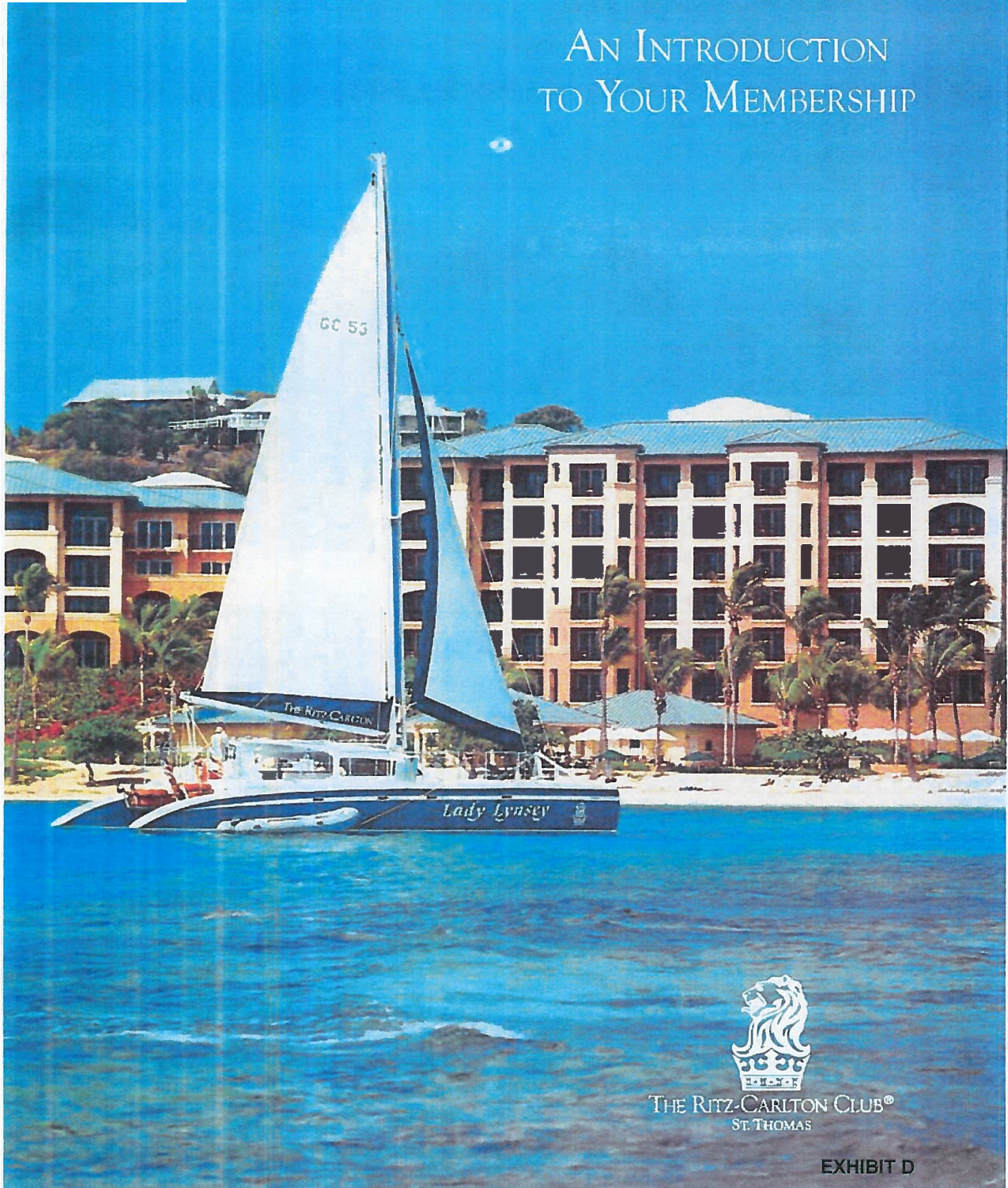
**FILED**

November 12, 2021 02:47 PM

ST-2018-CV-00768

TAMARA CHARLES  
CLERK OF THE COURT

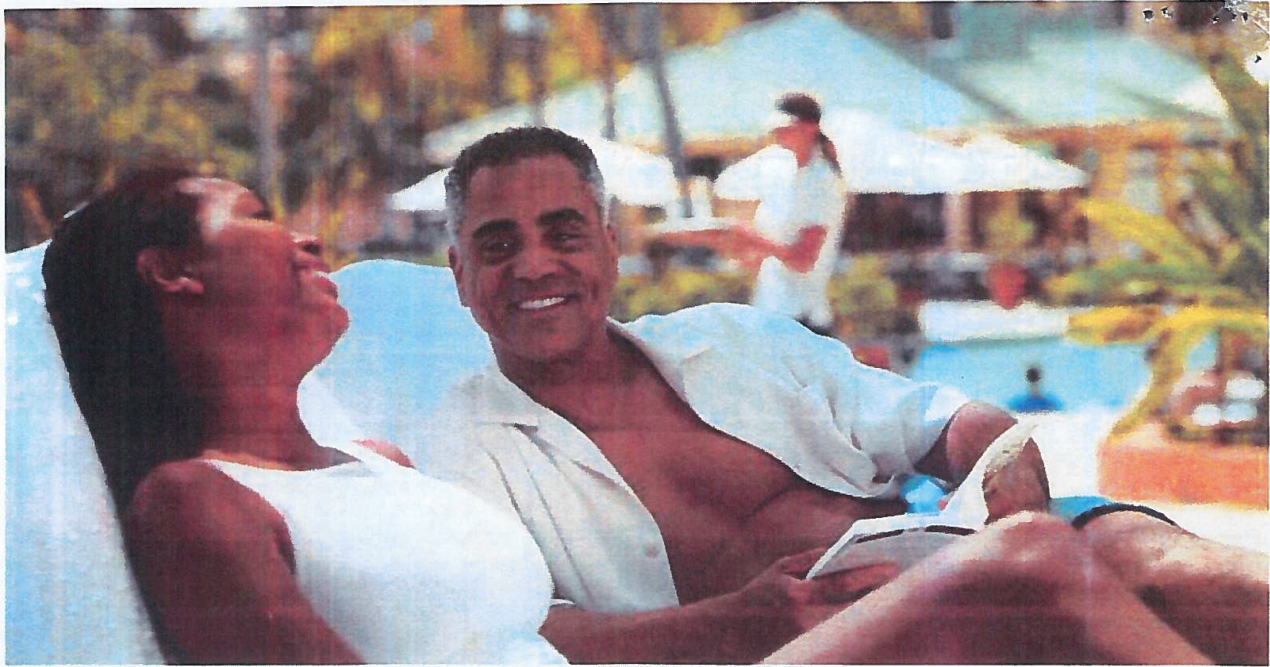
AN INTRODUCTION  
TO YOUR MEMBERSHIP



THE RITZ-CARLTON CLUB®  
ST. THOMAS

EXHIBIT D

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## ENJOYING YOUR EXPANDED TRAVEL OPTIONS<sup>1</sup>

### EACH YEAR YOU HAVE SEVERAL OPTIONS IN USING YOUR MEMBERSHIP INTEREST:

1. Travel using your Reserved Allocation
2. Exchange your Reserved Allocation to stay at your Home Club or a Sister Club
3. Enjoy last minute travel opportunities through the Space Available Program
4. Stay at Ritz-Carlton Hotels worldwide through the Hotel Reservation Service
5. Participate in 3RD HOME<sup>2</sup>

You also have the option to enroll and deposit your Allocation in The Lion & Crown Exchange Program in order to access the following usage options:

1. Elect to deposit all or a portion of your Allocation to receive Exchange Points (also sometimes referred to as Vacation Club Points) and use them within the Marriott Vacation Club Destinations<sup>TM</sup> Exchange Program<sup>3</sup>
2. Elect to deposit your Reserved Allocation for exchange with Exclusive Resorts

These options are currently available to Ritz-Carlton Club Members in Good Standing. Reservation Procedures and Exchange Procedures, relating to The Cobalt Travel Co., LLC, The Lion & Crown Travel Co., LLC, and the Marriott Vacation Club Destinations Exchange Program, as applicable, are all subject to change from time to time.

Members may join 3RD HOME prior to July 15, 2015 and receive a 3-year complimentary membership at the Chairman's Club level, enabling Members to access resort properties available through the 3RD HOME Exchange Program. Members who join 3RD HOME between July 15, 2015 and April 15, 2016 will receive a 2-year complimentary membership at the Chairman's Club level.

Enrolled Members may currently elect to deposit Reserved Allocation in 7-consecutive evening increments only, to receive Vacation Club Points, as is subject to change from time to time. Evenings previously released for exchange are not eligible for election.

This How to Use Guide is being provided as a summary of certain portions of the reservation and/or exchange rules and procedures for The Ritz-Carlton Club Membership Program, The Lion & Crown Exchange Program and/or the Marriott Vacation Club Destinations Exchange Program. Use of this summary guide should not take the place of full and careful review of the Reservation Procedures for the applicable The Ritz-Carlton Club, The Lion & Crown Travel Co., LLC Exchange Procedures for The Cobalt Travel Company, LLC Members with Access to The Lion & Crown Exchange Program and/or The Marriott Vacation Club Destinations Exchange Program Exchange Procedures, as applicable, all of which are subject to change and may be amended from time to time, or any other applicable rules associated with benefits or services referenced within this summary guide.

**EXHIBIT D**

**A.000107**



## OPTION 1

### TRAVEL USING YOUR RESERVED ALLOCATION

Your Membership Interest provides you with Reserved Allocation for a specific number of pre-assigned evenings of use annually at your Home Club. A calendar displaying the upcoming dates of your Reserved Allocation can be found at [www.myrcdc.com](http://www.myrcdc.com).

Your Reserved Allocation is automatically confirmed on your behalf approximately 16 months prior to the first day of your use period. You will receive an email confirmation after your Reserved Allocation is automatically confirmed and an additional reminder email confirmation approximately 120 days prior to the first day of your use period.

EXHIBIT D

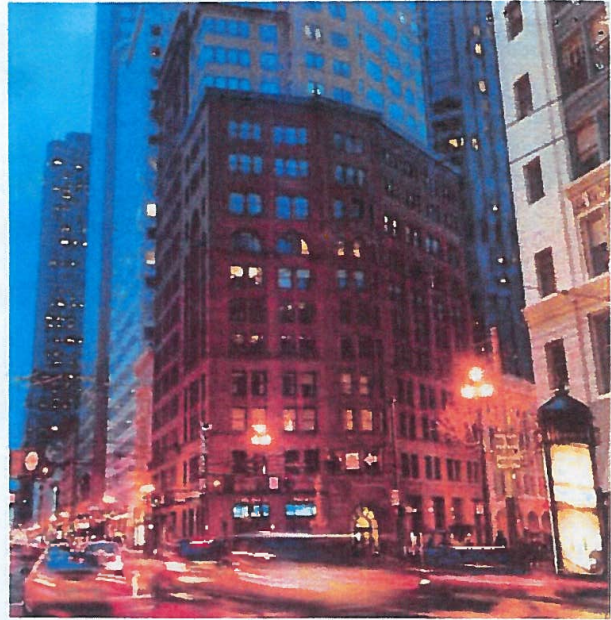
A.000108

## OPTION 2

### EXCHANGE AT YOUR HOME CLUB OR A SISTER CLUB

Your Membership Interest provides you with the option to exchange your Reserved Allocation for stays at your Home Club or a Sister Club.

Exchange requests are accepted on a first-come, first-served basis within the applicable request window, subject to availability and reservation rules. The chart below displays the various exchange request windows:



EXCHANGE TYPE	DESIRED DESTINATION	DESIRED TRAVEL SEASON	REQUEST WINDOW	MINIMUM LENGTH OF STAY
Home Club – Same Season	Home Club	Same Season	15 months prior to use period	7 evenings
Home Club – Alternate Season	Home Club	Alternate Season	13 months prior to use period	7 evenings
Club System Exchange	Sister Club	Any Season	9 months prior to use period	7 evenings
Open Exchange	Any Club	Any Season	6 months prior to use period	1 evening

Subject to availability, exchange requests are like-for-like, meaning that if you own a two-bedroom residence, you may request a two-bedroom residence. Floor plans vary at the Clubs, so when you request a Sister Club exchange, the bedroom configurations and amenities may be different from your Home Club. If you are unable to be confirmed into your requested exchange at the time when you request it, you may place a waitlist request. You may request any type of unit within the 60 day Space Available period, subject to availability.

To place an exchange request, contact Member Services at 1.888.220.2084, or visit [www.myrcdc.com](http://www.myrcdc.com) to release your Reserved Allocation to place a request for your desired travel dates and location.

**EXHIBIT D**

**A.000109**



### OPTION 3

#### ENJOY LAST MINUTE TRAVEL OPPORTUNITIES THROUGH THE SPACE AVAILABLE PROGRAM

Within 60 days of arrival, enjoy the ability to reserve Space Available Time at per diem rates at Ritz-Carlton Club locations, subject to availability and reservation rules.

Per diem fees are currently determined annually for each respective Club. There are two types of per diem fees available to you:

- Member – Available to the Member and Family Members as defined in the applicable reservation rules.
- Guest of a Member – Available to a Guest (as defined in the applicable reservation rules) of a Member who is not the Member or a Family Member.

In lieu of paying the per diem fee, you have the option to exchange Reserved Allocation within 60 days of arrival, subject to availability and reservation rules.

To reserve a Space Available reservation, contact Member Services at 1.888.220.2084 or view availability and instantly confirm your reservation, subject to availability, by visiting [www.myrcdc.com](http://www.myrcdc.com).

**EXHIBIT D**

**A.000110**



## CANCELLATION POLICY

For all confirmed reservations the fees, if any, for cancellations are as follows:

TIMEFRAME	CANCELLATION FEE
More than 45 days prior to arrival	No Cancellation fee
45 to 31 days prior to arrival	50% of such cancelled Allocation for Space Available Time & 50% of such Member Per Diem Fee (plus tax)
30 days or less prior to arrival	100% of such cancelled Allocation for Space Available Time & 100% of such Member Per Diem Fee (plus tax)

Currently, artist requests may be cancelled at any time without incurring a fee.

**EXHIBIT D**

**A.000111**



## OPTION 4

### STAY AT RITZ-CARLTON HOTELS WORLDWIDE THROUGH THE HOTEL RESERVATION SERVICE

Currently, as a Member of The Ritz-Carlton Destination Club, you enjoy an advantage when traveling to participating Ritz-Carlton hotels worldwide through the Hotel Reservation Service. The Hotel Reservation Service currently includes the following:

- 30% off published rack rate when available or best available rate (when hotel is not sold out)
- Upgrade at check-in, based upon availability
- Daily breakfast for two
- 4 p.m. checkout, based upon availability
- Welcome amenity
- Special hotel amenity
- Welcome note from the General Manager
- VIP status with Guest Relations

The Hotel Reservation Service is available to Members only and is not transferrable to family members, friends or guests. Any of the terms and conditions pertaining to the Hotel Reservation Service may be changed, limited, modified, or canceled at any time with or without notice. The Hotel Reservation Service is limited to two rooms per evening per interest owned.

To reserve a reservation at a Ritz-Carlton Hotel using the Hotel Reservation Service, contact Member Services at 1.888.220.2084 or view availability and instantly confirm your reservation, subject to availability, by visiting [www.myrcdc.com](http://www.myrcdc.com).

**EXHIBIT D**

**A.000112**

## OPTION 5 PARTICIPATE IN 3RD HOME



3RD HOME is a private reciprocal travel club for luxury second homeowners. The 3RD HOME portfolio comprises more than 2,600 luxury properties in 70 countries. In addition to private homes, 3RD HOME provides access to over 30 full-service residence clubs.

Members of The Ritz-Carlton Destination Club who join 3RD HOME by July 15, 2015 will have their initiation fee waived and will enjoy complimentary access to 3RD HOME's Chairman's Club Membership benefits for three years.<sup>4</sup>

To join 3RD HOME, visit [www.ritzcarltonclub.3rdhome.com/signup](http://www.ritzcarltonclub.3rdhome.com/signup).

Upon enrollment with 3RD HOME, you may earn "Keys" for each week of your Reserved Allocation that you deposit. The more desirable the week that is deposited, the more Keys that are earned. Ritz-Carlton Destination Club residences are assigned a Key level based on their number of bedrooms. The chart below indicates the number of keys a Member will earn for each non-peak/off-season week of Reserved Allocation deposited:

- 1 Bedroom = 2 Keys
- 2 Bedroom = 2 Keys
- 3 Bedroom = 3 Keys
- 4 Bedroom = 4 Keys

Extra Keys are earned when you deposit more desirable weeks, including double Keys when you deposit a Peak week and Triple Keys when you deposit a Holiday week.

3RD HOME will credit your account immediately with Keys for all deposited weeks that are more than 60 days from arrival, and are not Off-Season. For weeks that are deposited within 60 days of arrival, or are Off-Season, Keys will be credited by 3RD HOME when the week is reserved by another member.

Once earned, Keys may be used to reserve any home or residence club in the 3RD HOME system, subject to availability, by visiting [www.3rdhome.com](http://www.3rdhome.com).

There is an exchange fee payable to 3RD HOME based upon the number of Keys required to visit the desired destination. For the calendar year ending December 31, 2015, the fees range from \$395 to \$995 per confirmed week. Certain Members of The Ritz-Carlton Destination Club currently enjoy a fixed rate of \$495 when reserving a week at certain locations.

<sup>4</sup>Members who join 3RD HOME prior to July 15, 2015 and receive a 2 year complimentary membership at the Chairman's Club level, enabling Members to access resort properties available through the 3RD HOME Exchange Program. Members who join 3RD HOME between July 16, 2015 and April 15, 2016 will receive a 2 year complimentary membership at the Chairman's Club level.

EXHIBIT D





## THE LION & CROWN TRAVEL CO., LLC

As a Member of The Ritz-Carlton Destination Club, you have the option of enrolling in The Lion & Crown Exchange Program to enjoy additional usage options. These currently include the ability to elect to deposit a week or more of your Allocation, on a completely voluntary basis, and receive Vacation Club Points for use within the Marriott Vacation Club Destinations Exchange Program.

If you are not currently enrolled, you may contact Member Services at 888.220.2084 and request enrollment documents. Following that, you will receive either an email or packet containing the enrollment documents. Upon receipt of the enrollment documents, simply follow the instructions for enrollment.

Subject to availability, Enrolled Members may take advantage of the following usage options currently available:

1. Elect to deposit all or a portion of your Allocation in 7-consecutive night increments, and receive Vacation Club Points for use within the Marriott Vacation Club Destinations™ Exchange Program.
2. Elect to deposit your Reserved Allocation for Exchange with Exclusive Resorts.

**EXHIBIT D**

**A.000114**



## USAGE OPTION 1 FOR ENROLLED MEMBERS RECEIVING VACATION CLUB POINTS<sup>5</sup>

Vacation Club Points may be currently used for vacations at over 50 Marriott Vacation Club resorts worldwide, and certain Ritz-Carlton Club locations. Vacation Club Points may also currently be used for cruises, tours, boutique hotel stays, golf experiences, and much more through the Explorer Collection.

- If you wish to participate in the Marriott Vacation Club Destinations Exchange Program, you must first elect to deposit your Allocation in 7-consecutive night increments for Vacation Club Points. To learn how many Vacation Club Points you will receive, visit [www.myrcdc.com](http://www.myrcdc.com).

### BENEFIT LEVELS

There are currently<sup>6</sup> four benefit levels within the Marriott Vacation Club Destinations Exchange Program:

BENEFIT LEVEL	NUMBER OF VACATION CLUB POINTS <sup>7</sup>
Owner	Up to 3,999
Select	4,000 to 6,999
Executive <sup>8</sup>	7,000 to 9,999
Presidential	10,000 to 14,999
Chairman's Club <sup>9</sup>	15,000 or more

<sup>5</sup>Subject to availability and reservation rules.

<sup>6</sup>Effective April 30, 2015, benefit level thresholds and benefits are subject to change from time to time.

<sup>7</sup>Number of Vacation Club Points is the total of the exchange value of all enrolled weeks, plus any additional Vacation Club Points purchased in the Marriott Vacation Club Destinations program. All Every-Other-Year weeks are valued at 50% of their full exchange value every year.

<sup>8</sup>Owners with 6,500 to 6,999 Vacation Club Points as of April 29, 2015 who were granted Executive status will be required to obtain 2,000 Vacation Club Points to again achieve Executive status if their Owner's interest level falls below 6,500 Vacation Club Points.

<sup>9</sup>Owners with 13,000 to 14,999 Vacation Club Points as of April 29, 2015 who were granted Chairman's Club status will be required to obtain 15,000 Vacation Club Points to again achieve Executive status if their Owner's interest level falls below 13,000 Vacation Club Points.

**EXHIBIT D**



**DEADLINE FOR ELECTING TO DEPOSIT YOUR ALLOCATION FOR VACATION CLUB POINTS:**

- You may elect to deposit your Allocation to receive Vacation Club Points prior to the time frame for your benefit level. If you are a Owner, Select or Executive Owner, your deadline for electing to deposit your Allocation to receive Vacation Club Points is September 30th of the year prior; and if you are a Presidential or Chairman's Club Owner, the deadline for electing to deposit your Allocation to receive Vacation Club Points is October 31st of the prior year. To elect to deposit your Allocation for Vacation Club Points, contact Member Services at 888.220.2084.

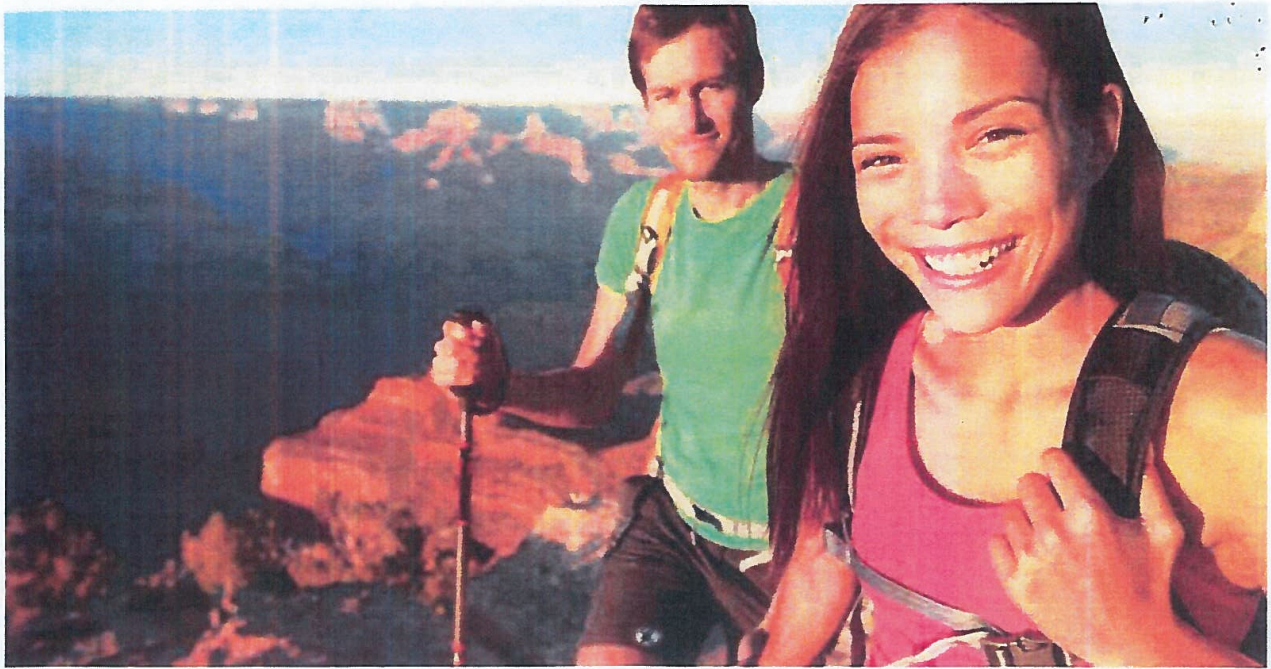
**MANAGING VACATION CLUB POINTS:**

- Your Use Year is the period of time when you may use your annual allotment of Vacation Club Points. Enrolled Members' Use Year is the calendar year: January 1 through December 31. For example, if you choose to elect to deposit your Allocation and receive Vacation Club Points for your Use Period starting on March 17, 2017 then you will be able to plan vacations using those Vacation Club Points to be used between January 1 and December 31 of 2017.
- Banking Vacation Club Points –You may bank some, or all of your Vacation Club Points to be used in a following Use Year as outlined in the chart below. Once Banked, Vacation Club Points must be used within the designated period and may not be borrowed back, banked again or transferred to another Owner.

**BANKING DEADLINES AND USE PERIOD**

BENEFIT LEVEL	BANKING DEADLINE <i>prior to the end of current use year</i>	USE BANKED VACATION CLUB POINTS
Owner	6 months	Within the immediately following Use Year
Select	6 months	
Executive	4 months	
Presidential	4 months	Within the immediately following 1.5 Use Years
Chairman's Club	4 months	Within the immediately following 2 Use Years

**EXHIBIT D**



- **Borrowing Vacation Club Points** – You may borrow all or a portion of Vacation Club Points in order to confirm a reservation in the immediately preceding Use Year up to 25 months in advance of the beginning of the Use Year you are borrowing from. (For example, if your Use Year begins on January 1, 2018, then you may borrow Vacation Club Points from that Use Year as early as December 1, 2015.) Once borrowed, if you later cancel the vacation for which you borrowed Vacation Club Points, you may use them to reserve another vacation prior to the original expiration date. Borrowed Vacation Club Points may not be banked into a following Use Year or transferred to another Member.

- **Transferring Vacation Club Points** – You may transfer your Vacation Club Points, excluding banked or borrowed Vacation Club Points, to another Marriott Vacation Club Destinations Exchange Program Member. The Vacation Club Points will retain the Use Year parameters of the Member who transferred them. Transferred Vacation Club Points may not be banked, borrowed or traded for Marriott Rewards points.

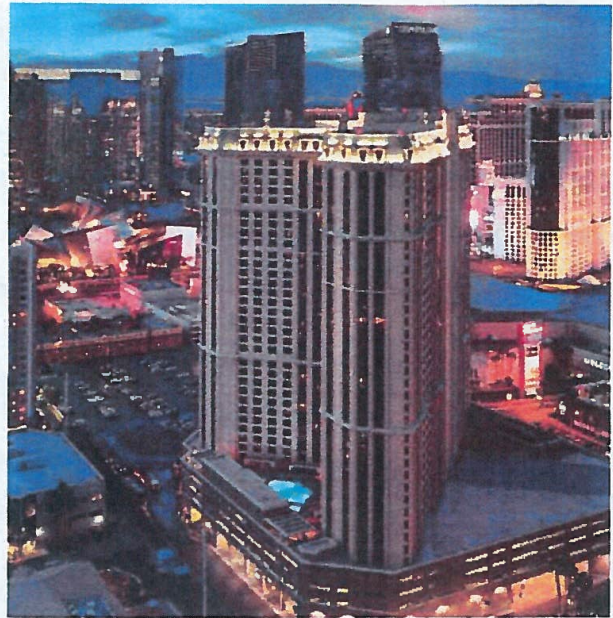
To bank, borrow or transfer Vacation Club Points, contact Member Services at 888.220.2084.

**EXHIBIT D**

**A.000117**

## MARRIOTT VACATION CLUB COLLECTION

The Marriott Vacation Club Collection is currently comprised of more than 50 Marriott Vacation Club Resorts around the world. Marriott Vacation Club Resorts feature villa accommodations which may include deluxe guestrooms to one-bedroom, two-bedroom and three-bedroom villas.



Marriott Vacation Club Resorts are located around the world, including currently in the following destinations:

### COASTAL RESORTS

- Hilton Head and Myrtle Beach, South Carolina
- Aruba and St. Kitts, Caribbean
- St. Thomas, U.S. Virgin Islands
- Palm Beach Shores and Marco Island, Florida
- Oahu, Maui and Kauai, Hawaii
- Newport Beach, California

### URBAN LOCATIONS

- Boston, Massachusetts
- Las Vegas, Nevada

### DESERT RESORTS

- Phoenix, Arizona
- Palm Desert, California

### GOLF DESTINATIONS

- Absecon, New Jersey
- Williamsburg, Virginia
- Miami, Florida

### MOUNTAINS

- Park City, Utah
- Vail and Breckenridge, Colorado
- South Lake Tahoe, California

### EUROPE

- Bailly-Romainvilliers, France
- Mallorca, Malaga, and Marbella, Spain

The number of Vacation Club Points required for vacations will vary, based on a number of factors, including:

- Time of year and check-in day,
- Villa size,
- Length of stay, and
- View type

To discover the number of Vacation Club Points required for your desired vacation, visit [www.myrcdc.com](http://www.myrcdc.com).

EXHIBIT D

A.000118



**RESERVATIONS WITHIN MARRIOTT VACATION CLUB COLLECTION, AND THE RITZ-CARLTON CLUB, VAIL, MAY BE MADE AS FOLLOWS:**

BENEFIT LEVEL	13 MONTHS IN ADVANCE <sup>10</sup>	12 MONTHS IN ADVANCE <sup>11</sup>	10 MONTHS IN ADVANCE <sup>10</sup>
Owner	7 or more consecutive nights with a Points Premium <sup>12</sup>	7 or more consecutive nights	Any number of nights
Select	7 or more consecutive nights	7 or more consecutive nights	Any number of nights
Executive	Any number of nights	Any number of nights	Any number of nights
Presidential	Any number of nights	Any number of nights	Any number of nights
Chairman's Club	Any number of nights	Any number of nights	Any number of nights

You may make a reservation by calling Member Services at 888.220.2084.

If a reservation is not available to immediately confirm within the Marriott Vacation Club Collection (does not include Luxury Property, other than the Ritz-Carlton Club, Vail), subject to availability of waitlist requests, you may request to be placed on a waitlist for the vacation you would like to confirm. Currently, a wait list request for a reservation for 7 or more consecutive nights may be made as early as 12 months in advance of the first day of a given Use Period; and for less than 7 nights as early as 10 months in advance.

<sup>10</sup>Reservations for the 13 and 10 month reservation windows are currently first available on Tuesday mornings beginning at 9 a.m. Eastern Time, as such day and time are subject to change.

<sup>11</sup>Reservations for the 12 month reservation window are currently first available on Friday mornings beginning at 9 a.m. Eastern Time, as such day and time are subject to change.

<sup>12</sup>Currently, Members may reserve 7 or more consecutive nights 13 months in advance, with a 20% additional Points Premium.

**EXHIBIT D**



THE FOLLOWING LAST-MINUTE RESERVATIONS POINTS DISCOUNTS ARE CURRENTLY OFFERED TO ENROLLED RITZ-CARLTON CLUB MEMBERS WHEN RESERVING NIGHTS WITHIN MARRIOTT VACATION CLUB COLLECTION AND THE RITZ-CARLTON CLUB, VAIL, AS FOLLOWS:<sup>13</sup>

BENEFIT LEVEL	60 DAYS IN ADVANCE	30 DAYS IN ADVANCE
Executive	N/A	25% discount off the number of Vacation Club Points required
Presidential	30% discount off the number of Vacation Club Points required	30% discount off the number of Vacation Club Points required
Chairman's Club	30% discount off the number of Vacation Club Points required	30% discount off the number of Vacation Club Points required

\*Special benefits available to Members in Good Standing and are subject to change or termination in the sole discretion of the Marriott Vacation Club Distribution/Exchange Program.

**EXHIBIT D**

**A.000120**



RESERVATIONS AT LUXURY PROPERTY INCLUDING THE RITZ-CARLTON CLUB, ST. THOMAS; THE RITZ-CARLTON CLUB, ASPEN HIGHLANDS; THE RITZ-CARLTON CLUB, LAKE TAHOE; AND THE RITZ-CARLTON CLUB, SAN FRANCISCO, MAY BE MADE AS FOLLOWS:

BENEFIT LEVEL	13 MONTHS IN ADVANCE	6 MONTHS IN ADVANCE
Owner	N/A	Any number of nights and waitlist available <sup>14</sup>
Select	N/A	Any number of nights and waitlist available <sup>14</sup>
Executive	Any number of nights <sup>14</sup>	Any number of nights and waitlist available <sup>14</sup>
Presidential	Any number of nights <sup>14</sup>	Any number of nights and waitlist available <sup>14</sup>
Chairman's Club	Any number of nights <sup>14</sup>	Any number of nights and waitlist available <sup>14</sup>

You may make a reservation by calling Member Services at 888.220.2084.

*Please note: Member Services is available at 9 a.m. Eastern Time every day. Reservations are confirmed on a first-come, first-served basis.*

If a reservation is not available to immediately confirm at a Luxury Property (other than the Ritz-Carlton Club, Vail), Enrolled Members may place a waitlist request as early as 6 months in advance of the first day of a given Use Period. Marriott Vacation Club Destinations™ Exchange Program's ability to confirm a specific exchange request is dependent upon availability of the desired accommodation or service. Thus, the Marriott Vacation Club Destinations Exchange Program cannot guarantee specific resort choices, dates of travel, or types or sizes of accommodations or services.

<sup>14</sup>Reservations at the Ritz-Carlton, St. Thomas, currently have a three-night minimum stay requirement.

**EXHIBIT D**

**A.000121**





## EXPLORER COLLECTION<sup>15</sup>

Subject to availability, Vacation Club Points may also be used for unique vacation adventures and tours through the Explorer Collection currently including the following:

- Cruises – Relax and recharge with an ocean or river cruise on the world's most popular cruise lines
- Guided Tours – Experience guided, group tours that explore truly fascinating regions around the world
- Hotels – Special Member packages for hotel stays put you in the perfect position to explore the world's most exhilarating cities, which currently include those listed below<sup>16</sup>
  - The Cosmopolitan of Las Vegas, Nevada
  - Grand Bohemian Hotel, Asheville, North Carolina
  - The Portman Ritz-Carlton, Shanghai, China
  - Travaasa Hana, Hana, Maui, Hawaii
  - The Carlton Hotel, New York City
  - Scrub Island Resort, Spa and Marina, BVI
  - El Monte Segrado, Taos, New Mexico
  - Boscolo Prague, Czech Republic
  - Boscolo Exedra Roma, Italy
  - Boscolo Venezia, Italy
  - Boscolo Budapest, Hungary

Executive, Presidential and Chairman's Club Owners may currently also use Vacation Club Points for reservations at select Ritz-Carlton® Hotels and boutique hotels including the following locations:<sup>16</sup>

- Ritz-Carlton Naples, Florida
- Ritz-Carlton New Orleans, Louisiana
- Ritz-Carlton Kapalua, Maui, Hawaii

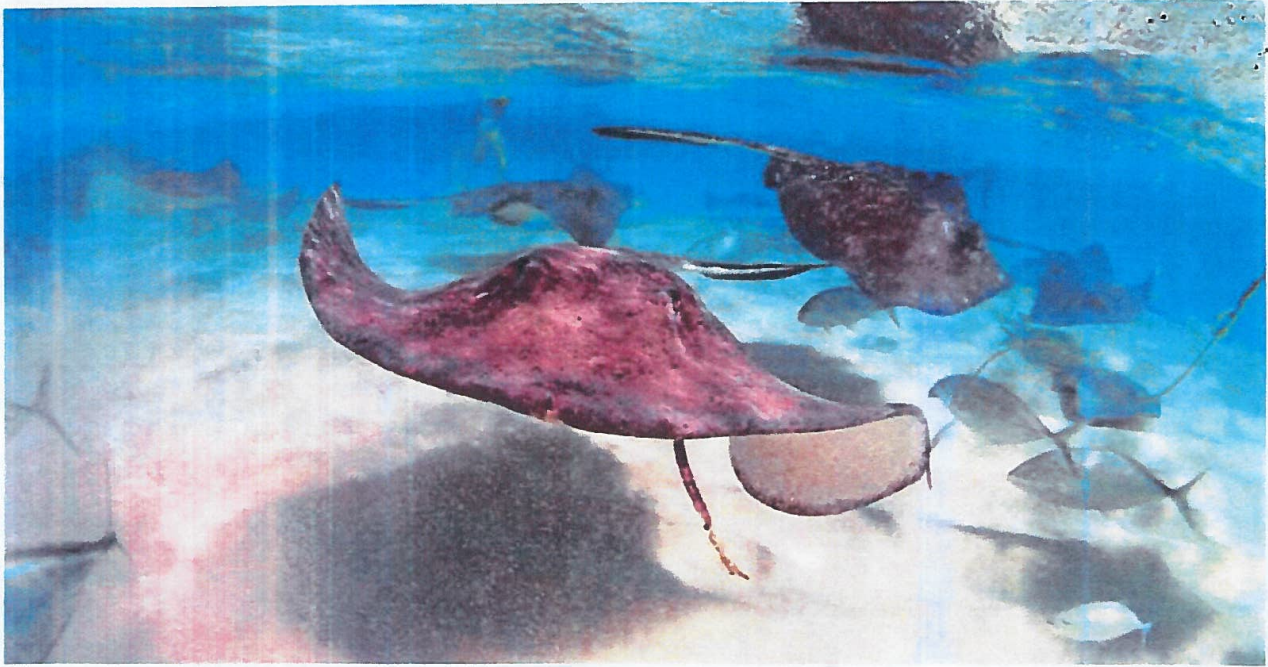
To learn about all of the Explorer Collection options and to book your trip, contact Member Services at 888.220.2084.

Access to the Explorer Collection is made available through the Marriott Vacation Club Destinations Exchange Program and is subject to the terms and conditions as outlined in the applicable Marriott Vacation Club Destinations Exchange Program documents. Actual experiences will be provided via contractual arrangements with third-party providers and may require the payment of additional fees.

Hotel locations are subject to change.

**EXHIBIT D**

**A.000122**



## USAGE OPTION 2 FOR ENROLLED MEMBERS EXCHANGE WITH EXCLUSIVE RESORTS

Currently, Members who are enrolled with The Lion & Crown Travel Co., LLC have the option of exchanging with Exclusive Resorts.

The agreement with Exclusive Resorts is subject to negotiation on an annual basis. To the extent this option remains available, terms and inventory may change.

For questions about Exclusive Resorts, contact Member Services at 888.220.2084.

**EXHIBIT D**

**A.000123**



## IMPORTANT CONTACT INFORMATION

### MEMBER SERVICES

310 Bearcat Drive  
Salt Lake City, UT 84115  
Toll-Free: 888.220.2084

### WEB

[myrcdc.com](http://myrcdc.com)

### HOURS OF OPERATION

Monday – Saturday, 9 a.m. – 9 p.m. ET  
Sunday, 9 a.m. – 6 p.m. ET

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As of April 30, 2015 RC-15-000124-1454

**EXHIBIT D**

**A.000124**



**FILED**

November 12, 2021 02:00 PM  
ST-2018-CV-00768

TAMARA CHARLES  
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

_____ )		
GREAT BAY CONDOMINIUM OWNERS )		
ASSOCIATION, INC. )		CIVIL NO. ST-18-CV-768
	)	
	)	ACTION FOR DECLARATORY
PLAINTIFF, )		JUDGMENT, TO CANCEL DEED
	)	AND TO QUIET TITLE
V. )		
	)	
THE NEIGHBORHOOD ASSOCIATION, INC. )		
	)	
_____ )		
DEFENDANT. )		

**ORDER FOR TEMPORARY RESTRAINING ORDER**

UPON MOTION of the Defendant, The Neighborhood Association, Inc. ("NA"), for a temporary restraining order against Plaintiff, Great Bay Condominium Owners Association, Inc. ("Great Bay"), under the authority of V.I.R.Civ.P. 65(b), and the Court having reviewed the motion, supporting memorandum of law, and affirmation in support thereof, hereby concludes that NA and its members have clearly shown that immediate and irreparable injury, loss or damage, will result to the movant before Great Bay can be heard in opposition, such injury consisting of the imposition upon the individual condominiums of the NA members, of a lien for common charges for that certain commercial unit described as "CU-1" or the "Grand Palazzo Lounge", with the associated threat that NA's members will be subjected to "lockout" from the use of their condominium residences and amenities to which they are entitled as the owners of such residences and as members of the Ritz-Carlton Destination Club as a rightful amenity of such ownership, if they do not pay the disputed assessments, which have been issued against their private residential interests by Great Bay while its action to determine ownership of CU-1 is pending and undecided, so that ownership of that unit, and responsibility for any valid common charges or dues therefore,

which would be the responsibility of the Owner of CU-1, has not yet been determined by this Court, and so that NA's members would effectively be coerced or compelled by this disputed assessment to make payments they do not owe, upon threat of loss of use of their residences while this case is pending, and the Court therefore concluding that Great Bay has initiated an unlawful and improper campaign to assess the individual members of NA, with years of retroactive dues assessments, purporting to rely upon a dubious interpretation of the governing condominium documents that require owners of residential units to pay such charges for this separate commercial unit, even as Great Bay has present before this Court the undecided claims in its suit seeking a declaration that it is not the owner of the commercial unit in question, despite having title of record thereto in the records of the Office of the Recorder of Deeds. In pursuit of its evasion of the authority of the Court to decide that claim, Great Bay has suddenly issued invoices to the individual members of NA who own separate interests in condominiums at the property, with a demand that they pay these disputed and apparently unlawful claims by November 22, 2021, or face eviction or lockout from their residences. This imminent threat of self-help by the Plaintiff constitutes a sufficient showing of irreparable harm to NA and its members, warranting issuance of this temporary restraining order, to preserve the status quo and protect NA and its owners from the threatened discriminatory and presumptive illegal actions now being taken. These threats are currently outstanding, and despite demand, have not been withdrawn, as evidenced by the affidavit of NA.

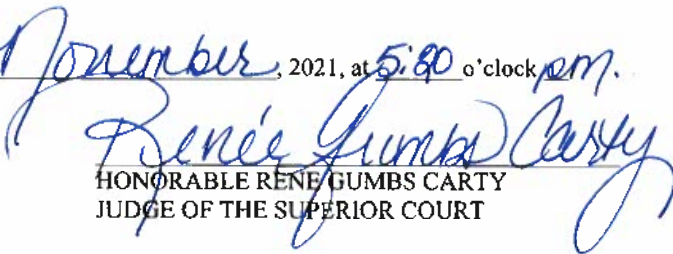
Accordingly, the Court finds that Defendant has demonstrated that (1) there is a reasonable probability of eventual success in this litigation and on this present threatened illegal conduct; (2) if injunctive relief is denied, NA and its members will suffer irreparable harm; (3) the harm to Great Bay is not outweighed by the harm to NA and its members if the requested relief is granted;

and (4) the public interest favors injunctive relief in this case.

NOW, THEREFORE, IT IS HEREBY ORDERED that Great Bay, and all persons acting in concert with Great Bay, be and are hereby ordered to rescind the invoices to NA members for dues and common charges for CU-1, and from taking any action to impose a lien related thereto, or from taking any steps to Lock Out or otherwise impair, restrain or obstruct in any way the use by NA's members or their residences, condominiums, or the common areas at the Ritz-Carlton, or other membership rights and amenities, for a period of fourteen (14) days from the date of this order, commencing on the date and hour set forth below, and it is further

ORDERED that this matter shall come on for hearing upon NA's motion for a preliminary injunction to continue the order here entered on November 19, 2021, at 10:00AM, in the Superior Court of the Virgin Islands, to be conducted by Zoom with an invitation to issue by the Clerk of the Court to the parties and their witnesses.

SO ORDERED this 19<sup>th</sup> day of November, 2021, at 5:30 o'clock pm.

  
HONORABLE RENE GUMBS CARTY  
JUDGE OF THE SUPERIOR COURT

ATTEST:

Tamara Charles  
Clerk of the Court

By:   
Latoya Camacho  
Court Clerk Supervisor 11 / 19 / 2021

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

<b>GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.</b>	)	
	)	<b>CIVIL NO. ST-18-CV-768</b>
<b>PLAINTIFF,</b>	)	
<b>v.</b>	)	<b>ACTION FOR DECLARATORY JUDGMENT, TO CANCEL DEED AND TO QUIET TITLE</b>
<b>THE NEIGHBORHOOD ASSOCIATION, INC.</b>	)	
	)	
<b>DEFENDANT.</b>	)	

**PLAINTIFF GREAT BAY CONDOMINIUM OWNERS ASSOCIATION'S  
MOTION TO DISSOLVE OR MODIFY TEMPORARY RESTRAINING ORDER**

Plaintiff Great Bay Condominium Owners Association, Inc. ("GBCOA"), pursuant to Rule 65(b)(4) of the Virgin Islands Rules of Civil Procedure, hereby moves to dissolve the Temporary Restraining Order ("TRO") entered by the Court on November 12, 2021, or alternatively to modify the TRO by (1) vacating the portion thereof requiring GBCOA to "rescind" the invoices to the Suite owners for past due CU-1 assessments, and (2) requiring NA to post an adequate bond as mandated by the express language of V.I.R.Civ.P. 65(c).

As demonstrated below, the TRO should be dissolved based on Defendant's failure to disclose to this Court certain undisputed and highly material facts relating to the CU-1 assessments. First, NA failed to disclose to the Court that NA's most significant and important member, the Marriott Vacation Club Trust Association ("MVC Trust"), admitted through its outside independent legal counsel that the Declaration of Condominium creating the Great Bay Condominium and the Supplementary Declaration of Condominium for The Club at Great Bay Condominium (d/b/a The Ritz-Carlton Club,



St. Thomas) "impose on [NA's members] the obligation to pay assessments to support CU-1 **regardless of whether [NA] or another entity owns it.**" The MVC Trust's outside legal counsel further advised NA's Board:

In order to eliminate the liability of [NA's members] for payment of the costs associated with the operation, maintenance, management and repair of CU-1 or spread such costs to all of the owners of Great Bay Condominium, these documents must be amended. The Company cannot unilaterally amend these documents. Furthermore, the revised documents must be filed with various regulatory authorities.

Although [NA] attempted to convey CU-1 to GBCOA, such a transfer does not terminate the obligation of the Suites and Suite owners to pay assessments for ownership, management, operation and maintenance of CU-1. In fact, by virtue of such transfer, [NA] loses control of the operation of the facility while the members retain the liability.

NA has never disclosed these admissions, which GBCOA learned about only recently, to its other members in breach of its fiduciary duties and failed to disclose the admissions to the Court in NA's *ex parte* motion for TRO.

Second, NA also failed to disclose to the Court that the Developer of the Ritz-Carlton Club at Great Bay, another of NA's members and the entity who **drafted the Declarations** governing NA and the commercial unit CU-1, **paid** its portion of the assessments in question **without objection**. The Developer and the MVC Trust are closely related entities both owned by Marriott International. Together they own 49% of the Residence Interests comprising NA's membership and thus control 49% of NA's voting power. By paying the assessments without objection, the Developer unambiguously admitted its personal liability to pay the assessments regardless of who owns CU-1 and irrespective of any dispute lodged by NA Board's concerning the assessments.

Undoubtedly, the Court would not have entered the TRO had these material and highly probative facts been disclosed by NA or if GBCOA had been given an opportunity to respond to NA's motion. NA's failure to disclose these facts in its *ex parte* motion for TRO, standing alone, justifies dissolution of the TRO. Furthermore, as demonstrated below, the TRO order as drafted and submitted by NA and signed by the Court suffers from myriad other infirmities, each of which requires dissolution of the TRO order, or at the very least, its modification by vacating the direction to GBCOA "rescind" the invoices and requiring NA to post a bond in accordance with the express requirements of Rule 65(c).

**I. Defendant's Failure to Disclose Undisputed Material Facts Relevant to the Court's Consideration of Defendant's TRO Request Mandates Dissolution of the TRO**

Defendant's motion for TRO inexcusably failed to disclose to the Court material and highly probative facts which, if considered, would have required the Court to deny the TRO. Indeed, these undisputed facts virtually foreclose any findings on the record evidence in favor of NA with respect to the four factors relevant to deciding a TRO request and motion for preliminary injunction:

- (1) whether the movant has shown a reasonable probability of success on the merits;
- (2) whether the movant will be irreparably injured by denial of the relief;
- (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and
- (4) whether granting the preliminary relief will be in the public interest.

*3RC & Co. v. Boynes Trucking Sys., Inc.*, 63 V.I. 544, 550 (2015). Indeed, as demonstrated below, after NA obtained the TRO based on its grossly inadequate and

highly misleading presentation of the facts, NA's Board trumpeted the Court's TRO order and its highly pejorative and vituperative "findings" to smear GBCOA to its members and the public at large. The harm inflicted by this conduct on GBCOA's reputation, credibility and ability to effectively manage The Ritz-Carlton Club at St. Thomas is *incalculable* and unfortunately *irreparable*. While this harm can never be remedied, it can and must be assuaged by an order from this Court dissolving the ill-gotten TRO.

**A. Independent Outside Legal Counsel for the MVC Trust, NA's Most Significant Member, Admitted Its Liability For Payment of All CU-1 Assessments Regardless of Who Owns CU-1.**

GBCOA recently became aware of highly relevant admissions made by outside legal counsel to the MVC Trust. The MVC Trust, together with the Developer, own 49% of the Residence Interests in the Suites, which are located in Buildings G and H of the Great Bay Condominium. Affidavit of Abbey Chung (hereinafter "Chung Aff.") attached hereto as Exhibit 2, at ¶¶ 5-6. By virtue of such ownership, the MVC Trust and the Developer are by far NA's most significant and important members, owning 49% of the voting interests in NA.<sup>1</sup> *id.*

In 2019, after NA's purported unilateral transfer the CU-1 deed to GBCOA, NA sought the support of its members including the MVC Trust to dissolve NA as a corporate entity. In response, Margaret Rolando, a partner in the law firm of Shutts & Bowen LLP, in her capacity as outside legal counsel to the MVC Trust, wrote a letter to

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<sup>1</sup> The mandatory members of the Neighborhood Association consist of all owners of Residence Interest in the Suites at the Great Bay Condominium, which are located in Buildings G and H of the Condominium property. Exhibit 3 at p.2 ¶ 5; Exhibit 4 attached hereto at p. 3 ¶ 5. The commercial unit CU-1 is located on the top floor of Building H and pursuant to the Declarations is designated for the exclusive use of the occupants of the Suites. Exhibit 3 at p.2 ¶ 2.

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NA's Board opposing the dissolution. Ms. Rolando, whose expertise is in Real Estate Law and Condominium and Planned Development Law, expressed the following clear and unequivocal admissions on behalf of her client the MVC Trust:

The Declaration of Condominium creating the Great Bay Condominium and the Supplementary Declaration of Condominium for The Club at Great Bay Condominium, as well as other documents include multiple references to the rights and obligations of [NA]. These Declarations are covenants running with the land and **impose on the Suite owners** [NA's members] **the obligation to pay assessments to support CU-1 regardless of whether [NA] or another entity owns it.** In order to eliminate the liability of the Suite owners for payment of the costs associated with the operation, maintenance, management and repair of CU-1 or spread such costs to all of the owners of Great Bay Condominium, these documents must be amended. [NA] **cannot unilaterally amend these documents.** Furthermore, the revised documents **must be filed with various regulatory authorities.**

Although [NA] attempted to convey CU-1 to GBCOA, such a transfer does not terminate the obligation of the Suites and Suite owners to pay assessments for ownership, management, operation and maintenance of CI-1. In fact, by virtue of such transfer, [NA] loses control of the operation of the facility **while the members retain the liability.**<sup>2</sup>

Exhibit A to Affidavit of David F. Wentzel (hereinafter "Wentzel Aff.") attached hereto as Exhibit 1, at p. 2 (emphasis supplied).

GBCOA only recently discovered Ms. Rolando's letter buried in a random location within a 5,000-page dump of unsorted and disorganized documents produced by NA in the separate litigation pending before Judge Sigrid M. Tejo, Civil No. ST-19-CV-650. Exhibit 1, Wentzel Aff. at ¶¶ 2-3.<sup>3</sup> Astonishingly, NA's Board has never disclosed Ms. Rolando's letter or her expert legal conclusions to NA's members. Exhibit

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<sup>2</sup> Ms. Rolando is a member of the American College of Real Estate Lawyers and is Board-Certified by the Florida Bar in both Real Estate Law and Condominium and Planned Development Law. Exhibit B to Wentzel Aff.

<sup>3</sup> As discussed *infra*, the issue of NA's liability for the CU-1 assessments is directly at issue in the case pending before Judge Tejo. The separate issue of the Suite owners' personal liability for the same assessments is not raised by the pleadings in either the case before Judge Tejo or in this case.

2, Chung Aff. at ¶ 8. NA likewise deliberately concealed Ms. Rolando's material admissions from the Court in seeking the TRO. Notably, Ms. Rolando derived her conclusions about the personal liability of NA's members to pay all CU-1 dues and expenses regardless of who owns CU-1 based on her own analysis of the Declarations and other governing documents, independent of GBCOA's own identical conclusions. Exhibit 2, Chung Aff. at ¶ 9.

**B. The Developer, Who Wrote the Declarations and the Amendments Creating Both NA and the Commercial Unit CU-1, Paid the Assessments Without Objection**

The Developer of the Great Bay Condominium and The Club at Great Bay Condominium (a/k/a The Ritz-Carlton Club) is the owner of the Ritz-Carlton Hotel, RC Hotels (Virgin Islands), Inc. The Developer drafted all of the governing Declarations including the specific amendments filed in 2005 and 2006 creating both the Neighborhood Association and the commercial unit CU-1. Exhibits 3 and 4 attached hereto. The Developer also drafted GBCOA's articles of incorporation and bylaws, as well as NA's articles of incorporation and bylaws. Exhibits 5 through 8 attached hereto. As noted, the Developer and its affiliate, the MVC Trust, collectively own 141 Residence Interests in the Suites out of a total of 299 Residence Interests, which translates to 49% of the voting interests in NA. Chung Aff. at ¶ 6.

The managing agent for the Developer is RC St. Thomas, LLC, which also serves as the managing agent for both GBCOA and the Neighborhood Association. Chung Aff. at ¶¶ 10-11. On November 12, 2021, hours before NA filed its motion for TRO, RC St. Thomas, LLC paid the Developer's portion of the CU-1 assessments that are the subject of the TRO without objection. Chung Aff. at ¶ 12. Without informing the

Court of this material fact, NA filed its motion for TRO and tendered to the Court an order "rescinding" the very same invoices for the CU-1 assessments that NA's managing agent had already paid without objection on behalf of the Developer. NA's Board (apparently) took this action without an authorizing resolution or a unanimous written consent signed by NA's directors,<sup>4</sup> and certainly without the consent or authorization of the managing agent for both NA and the Developer, RC St. Thomas, LLC.

**C. The Material Facts NA Concealed From the Court Refute the "Findings" NA Included in the TRO Order**

In light of the clear admissions by NA's most significant members that the express language of the Declarations "impose on the Suite owners the obligation to pay assessments to support CU-1 regardless of whether [NA] or another entity owns it," the supposed "findings" contained in the TRO order drafted by NA and signed by the Court are unsupportable. Indeed, these "findings" are refuted not only by the Developer's and the MVC Trust's admissions, but also by the unambiguous language appearing in numerous places throughout the governing Declarations and their various amendments.

**1. NA Cannot Demonstrate a Reasonable Probability of Success on the Merits or an Irreparable Harm**

NA cannot plausibly demonstrate either a reasonable probability of success on the merits or an irreparable harm, both of which are required to obtain either a TRO or a preliminary injunction. *3RC & Co.*, 63 V.I. at 555 ("[T]he issuance or denial of a preliminary injunction requires an evaluation in combination of the moving party's claim

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<sup>4</sup> Nowhere in NA's motion papers or the supporting affidavits does NA demonstrate, much less allege, the existence of an authorizing resolution or signed unanimous written consent directing NA to file its motion seeking "rescission" of the assessments paid by the Developer.

of injury and its chance of success on the merits.”) (internal quotation marks, alterations and citations omitted); *see also Canegata v. Schoenbaum*, 64 V.I. 252, 259 n.20 (Super. Ct. 2016) (“The factors to be considered in when evaluating a temporary restraining order request are the same factors courts consider when evaluating whether to issue a preliminary injunction”) (citation omitted).

First, as admitted by the Developer and the MVC Trust, the unambiguous provisions of the Declarations impose direct liability on the Suite owners to pay all assessments relating to CU-1 regardless of whether NA or GBCOA owns it. The Fifth Amendment to the Condominium Declaration, which submitted Building G and the commercial unit CU-1 to the Great Bay Condominium, states in paragraph 5:

***All Owners of Residences*** that are designated as a Two Bedroom Suite shall, in addition to being Members of the Condominium Association, be mandatory members of the Neighborhood Association whose sole purpose is to own and operate Commercial Unit CU-1, which shall be conveyed by Declarant to the Neighborhood Association and ***utilized for the exclusive benefit of the occupants from time to time of the Two Bedroom Suites***, whether or not such occupants are Members of the Neighborhood Association, and as more particularly described in the organizational and governing documents of the Neighborhood Association. As a member of the Neighborhood Association, ***Owners of Two Bedroom Suites are responsible for all costs and expenses of the ownership and operation of Commercial Unit CU-1***, including but not limited to any services that it may elect to provide.

Exhibit 3, Fifth Amendment to Condominium Declaration, at p. 2.

On the same date, the Developer filed the Fourth Amendment to the Supplementary Declaration (“Club Declaration”), which created the Residence Interests in the Suites and submitted them to the interval form of ownership. Paragraph 5 of this amendment likewise declares the Suite owners to be exclusively responsible for all

dues and expenses relating to CU-1, and provides a lien in favor of GBCOA for all such unpaid dues:

The twelve (12) Residences which are the subject of this amendment are Two Bedroom Suites and, as such, all Owners of Residence Interests therein shall in addition to being Members of the Condominium Association, be mandatory members of the Neighborhood Association, whose contemplated sole purpose shall be to own and operate Commercial Unit CU-1, and which may provide certain services for the exclusive benefit of the occupants from time to time of the Two Bedroom Suites, whether or not such occupants are Members of the Neighborhood Association. More particularly, and in accordance with the separate organizational and governing documents of the Neighborhood Association, ***its members*** shall control the Neighborhood Association ***and be responsible for all costs and expenses related to the ownership and operation of the Commercial Unit CU-1***, including but not limited to any services that it may elect to provide.

Exhibit 4, Fourth Amendment to Club Declaration, at p. 3, ¶ 5.

As Ms. Rolando admitted on behalf of the MVC Trust, these obligations are covenants running with the land unaffected by any transfer of ownership of CU-1. In fact, the Developer expressly declared that all provisions of the Declarations as amended from time to time run with the Residences as though recited verbatim in every deed, lease or conveyance of a Residence Interest. Exhibit 9, Condominium Declaration, at p. 14, ¶ 15.<sup>5</sup> As Ms. Rolando admitted and the Developer likewise declared in the governing Declarations, elimination of the Suite owners' liability for payment of all assessments supporting CU-1 requires an amendment to the Declarations, which undisputedly has never occurred. Exhibit A to Wentzel Aff. at p. 2;

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<sup>5</sup> The Fourth Amendment to the Declaration of Condominium, which the Developer filed in anticipation of submitting Building G and the commercial unit CU-1 to the Condominium property, provides that "the ownership interest of the Owner of a Commercial Unit shall be deemed to an ownership interest in a Residence." Exhibit 10 at p. 3.



Exhibit 9, at p. 14 ¶ 16(a) (declaring that an amendment to the Declaration may be accomplished only by the affirmative vote of 51% of all members of GBCOA).

In light of these uncontroverted facts, NA's feigned expressions of surprise and outrage that GBCOA "has suddenly assumed the power to impose assessments for dues for CU-1 directly on the individual members of NA" are hollow and utterly disingenuous.

Moreover, the Supreme Court of the Virgin Islands has stated that "where the language of a restrictive covenant – and, in particular, the language of a restrictive covenant outlined in the declaration of a common interest community – is plain and unambiguous, it is well settled that ordinary principles of contract apply." *Pavel v. Estates of Judith's Fancy Owners' Association, Inc.*, 71 V.I. 691, 695 (2019). As demonstrated above and in GBCOA's Motion for Partial Summary Judgment, which has been pending in this action for more than two years, NA's proffered interpretation of the Declarations violates basic canons of contract interpretation and renders pointless, superfluous and ineffective the entire structure for ownership and operation of CU-1 that the Developer established in the Declarations.<sup>6</sup> Such an interpretation must be rejected. *Guardian Gen. Ins. Ltd. v. Caribbean Food Servs., Inc.*, 2016 V.I. LEXIS 215, \*220 (Super. Ct. 2016) (when interpreting contract provisions, an interpretation that nullifies a provision should be avoided); *Elbrecht v. Carambola Ptnrs., LLC*, 2010 U.S. Dist. LEXIS 72158, \*18 (D.V.I. July 16, 2010) ("An interpretation which gives a

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<sup>6</sup> GBCOA hereby incorporates its motion for partial summary judgment and supporting exhibits as though fully set forth herein.

reasonable, lawful and effective meaning to all terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect.”) (citation omitted)).

More immediately, because the Declarations unambiguously impose liability on the Suite owners to pay all assessments relating to CU-1 as admitted unequivocally by the Developer who drafted the Declarations, as well as the MVC Trust, NA cannot establish irreparable harm in the absence of a TRO and preliminary injunction. Virgin Islands law is crystal clear that irreparable harm is “certain and imminent harm **for which a monetary award does not adequately compensate.**” *Yusuf v. Hamed*, 59 V.I. 841, 853 (2013) (emphasis added) (quoting *Wisdom Imp. Sales Co. v. Labatt Brewing Co.*, 339 F.3d 101, 114 (2d Cir. 2003)). “[W]hen the record indicates that [a plaintiff’s loss] is a matter of simple mathematic calculation, a plaintiff fails to establish irreparable injury for preliminary injunction purposes.” *Yusuf*, 59 V.I. at 854 (alteration in original) (internal quotation marks and citations omitted). Any alleged “loss” suffered by NA’s members is purely monetary and a matter of simple mathematic calculation. Should the Court ultimately determine on the merits that the Suite owners are not liable for the assessments in question, the Suite owners can be made whole through a refund of whatever monies they paid in satisfaction of the assessments. This precludes any finding of irreparable harm as a matter of law.

Furthermore, the Declaration creating the Great Bay Condominium expressly states in paragraph 9:

Each Member of a Residence **is personally liable for all assessments made against the Residence** pursuant to this Declaration.... **No Member may withhold payment of any regular or special assessment or any portion thereof because of any dispute** which may exist between that Member and the Members Association, the directors of the Members

Association, the manager retained by the Members Association or the Declarant or among any of them, but rather ***each Member shall pay all assessments when due pending resolution of any dispute.***

Exhibit 9 at pp. 10-11 (emphasis supplied).

As demonstrated, the Suite owners are first and foremost members of GBCOA; accordingly, pursuant to the above-quoted language of the Condominium Declaration they are obligated to pay the invoices for the CU-1 assessments when due – just as the Developer and author of the Declarations did – regardless of any dispute over the assessments. Any alleged harm to the Suite owners resulting from their nonpayment of the assessments in violation of the Declaration, including lockout procedures established in the Rules and Regulations or GBCOA's express lien rights, is purely *self-inflicted*. All such harm may be altogether avoided by simple compliance with the Declaration's express requirement to pay the assessment when due pending resolution of any dispute.

**2. The Harm Inflicted on GBCOA By Granting the TRO Is Far Greater Than Any Alleged Harm to NA or Its Members by Denial of the Relief**

After obtaining the TRO order based on its grossly inadequate and misleading presentation of the facts, NA touted the TRO order and its highly pejorative "findings" to smear GBCOA to its members and, by extension, to the public at large. Exhibit C to Chung Aff. Unlike the purely monetary harm that may result from NA's and the Suite owners' knowing violation of the Declaration's express requirement to pay the CU-1 assessments pending resolution of any dispute, the harm inflicted on GBCOA and its directors by the TRO order is truly irreparable. The TRO order, drafted entirely by NA and immediately signed by the Court without change, is replete with scandalous and

libelous accusations against GBCOA and its directors, couched as judicial “findings.” These includes the baseless “findings” that GBCOA “has initiated an unlawful and improper campaign to assess the individual members of NA” for the past-due CU-1 dues “purporting to rely upon a dubious interpretation of the governing condominium documents.”

As demonstrated, GBCOA's issuance of the invoices is neither “unlawful” nor “dubious.” To the contrary, GBCOA's actions are firmly rooted in the plain and unambiguous language of the Declarations, including the requirement that each member must pay all assessments levied by the Members Association when due pending the outcome of any dispute – an interpretation the Developer who wrote the Declarations and the MVC Trust agree with unequivocally.

Equally baseless is the TRO order's “finding” that GBCOA issued the invoices to the Suite owners for the CU-1 assessments “[i]n pursuit of its evasion of the authority of the Court to decide that claim.” Contrary to this purported “finding,” the issue of the Suite owners' personal liability for the unpaid CU-1 assessments, as distinct from NA's joint and several liability for the assessments, has never been properly placed before this Court. It is hornbook law that “[T]he court cannot provide a remedy, even if one is demanded, when [the party] has failed to set out a claim for relief.” 10 C. Wright & A. Miller, *Federal Practice and Procedure* § 2664 (3d ed.1998); see *Caribbean Healthways, Inc. v. James*, 55 V.I. 691, 699 (2011) (“A claim cannot be raised for the first time [i]n a ... motion—it must be contained in the complaint.”) (collecting cases).

GBCOA's complaint in this case seeks relief only with respect to NA's attempted unilateral conveyance of the CU-1 deed to GBCOA. Counts I through III seek

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cancellation of the deed for failure to comply with specific provisions of the Condominium Declaration; Count IV asserts a claim to quiet title to CU-1 based on the defective conveyance; and Count V seeks declaratory judgment that NA remains the owner of CU-1 for the reasons alleged in Counts I through IV. Exhibit 11, Complaint filed in ST-18-CV-768. Nowhere in GBCOA's complaint is the liability of the Suite owners for past-due CU-1 assessments even mentioned, let alone placed at issue. NA's pleading in this case is *purely defensive*; it asserts no counterclaim or other claim for affirmative relief whatsoever. Exhibit 12, Answer filed by NA.

Liability for the past-due CU-1 assessments is at issue (at least partially) in the case pending before Judge Tejo, but not the specific issue of the Suite owners' personal liability for such assessments. Exhibit 13, Complaint filed by GBCOA in ST-19-CV-650. Moreover, NA objected to consolidation of that case with this case, and this Court declined to order consolidation stating:

The two cases share common facts, but the legal issues are distinct. This is an action to quiet title and cancel a deed, while ST-19-CV-650 is an action to recover a debt arising from a dispute over funds held in a trust account. While the parties and property underlying the disputes are the same, there is no risk of conflicting judgments and the legal issues do not need to be considered simultaneously or by the same judge.

Exhibit 14, Order on GBCOA's Motion for Consolidation, dated December 22, 2020.<sup>7</sup>

Accordingly, the issue of the Suite owners' personal liability for the past-due CU-1 assessments has never been properly placed before this Court. This undisputed fact,

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<sup>7</sup> Although not mentioned in the Court's order, Count I of the complaint in ST-19-CV-650 asserts a claim against NA for debt arising from unpaid CU-1 assessments for 2017 through 2019. Exhibit 13 at p. 2, Count One. Liability for unpaid CU-1 assessments for 2020 and 2021 are not raised in either ST-19-CV-650 or in this case.

standing alone, justifies if not mandates dissolution of the TRO Order. *Caribbean Healthway*, 55 V.I. at 699.

Finally, the harm inflicted on GBCOA and its directors by the TRO Order and its erroneous "findings" of "illegal" and "illicit" conduct is palpable, severe and irreparable. NA's actions as endorsed by this Court have materially harmed GBCOA's reputation, credibility, and ability to effectively administer the Great Bay Condominium in accordance with the governing documents. Several GBCOA members who own Residence Interests in the Suites have made written demand for a refund of their payments in satisfaction of the invoices. *Chung Aff.* at ¶ 13. A reasonable inference exists, based on the communication NA sent to its members touting the Court's TRO Order, that other members who paid the assessments will demand a refund. Unlike the speculative, purely monetary harm NA's members may suffer if the Court dissolves the TRO, the Supreme Court of the Virgin Islands has recognized the type of harm inflicted on GBCOA by the TRO Order as immediate and irreparable. *Cf. Yusuf*, 59 V.I. at 855 (affirming trial court's determination that defendant's interference with plaintiff's equal right to manage the parties' jointly-owned business constituted irreparable harm not compensable by money damages).

In sum, the TRO Order suffers from numerous infirmities, each of which standing alone justifies its dissolution and considered together unquestionably mandate such relief.

**II. In the Alternative, the TRO Order Must Be Modified to Vacate the Affirmative Injunction Requiring GBCOA to “Rescind” the Invoices, and to Require Payment of a Bond by NA as Expressly Required by V.I.R.Civ.P. 65(c)**

“A temporary restraining order is a stop-gap procedural device to preserve the status quo until a preliminary or permanent injunction can be considered.” *Appleyard v. Governor Juan F. Luis Hosp. and Medical Ctr.*, 2014 WL 3767210, \*2 (V.I. Super. 2014) (citation omitted). “An injunction is any ‘court order commanding or preventing an action.’” *Wessinger v. Wessinger*, 56 V.I. 481, 488 (V.I. 2012) (quoting *Black’s Law Dictionary*). “A preliminary injunction is an ‘extraordinary and drastic remedy,’ never awarded as of right.” *Id.* (quoting *Yusuf*, 59 V.I. at 847). A preliminary injunction “may only be awarded upon a clear showing that the [movant] is entitled to such relief.” *Yusuf*, 59 V.I. at 847 (citation omitted).

Because the TRO Order does not merely preserve the status quo, but rather affirmatively directs GBCOA to “rescind the invoices to NA members for dues and common charges for CU-1,” it is an injunction. *Cf. Wessinger*, 56 V.I. at 488 (holding that order requiring the defendant to “immediately return” a child to its father was “an independent injunction”). Furthermore, rescission of the invoices is far from a temporary stop-gap; it is tantamount to a permanent injunction granting ultimate relief on the merits in the absence of any request for such relief in NA’s pleading. Indeed, the Merriam Webster online dictionary defines “rescind” as “to make void by action of the enacting authority or a superior authority: repeal.”<sup>8</sup> Since NA has neither requested such relief nor clearly demonstrated its entitlement thereto, the Court committed clear error in

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<sup>8</sup> <https://www.merriam-webster.com/dictionary/rescind>

signing NA's TRO Order granting an injunction directing GBCOA to rescind the invoices. The error is especially clear in light of the unambiguous language of the Declarations and the unequivocal admissions of the Developer and the MVC Trust demonstrating the Suites owners' personal liability for the CU-1 assessments and obligation to pay them pending resolution of any dispute. At the very least, the TRO Order must be modified to vacate the affirmative injunction requiring GBCOA to "rescind" the invoices.

Additionally, the TRO Order must be modified to require NA to post a bond, as expressly required by V.I.R.Civ.P. 65(c). Rule 65(c) states in relevant part:

**Security.** The court may issue a preliminary injunction or a temporary restraining order *only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.*

As the Supreme Court of the Virgin Islands has specifically held, "the purpose of this security is to guarantee that the enjoined party will be compensated for the expenses of complying with an erroneously issue injunction, as well as placing the moving party on notice of the maximum amount of compensation it could be forced to pay." *Yusuf*, 59 V.I. at 860. Because "[i]t is generally settled that, with rare exceptions, a defendant [in this case plaintiff] wrongfully enjoined has recourse only against the bond," *Id.* (citation omitted, collecting cases), "courts should err on the high side" in setting the amount of security." *Id.* A trial court's failure to require an adequate bond as mandated by Rule 65(c) commits an abuse of discretion. *Id.*

The assessments enjoined by the TRO Order include \$759,102 for maintenance fees relating to CU-1; \$116,027 for late fees pursuant to the Rules and Regulations of the Great Bay Condominium; and \$142,165 in Interest. Accordingly, the Court should





*Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.*  
Case No. ST-18-CV-768  
Plaintiff Great Bay Condominium Owners Association's Motion to Dissolve or  
Modify Temporary Restraining Order

- AND -

**DAVID F. WENTZEL, ESQ.**  
Wentzel Law Offices  
77 W. Washington St., Suite 2100  
Chicago, IL 60602  
Tel: (312) 697-0500  
Fax: (312) 697-0505  
Email: [dwentzel@wentzellaw.com](mailto:dwentzel@wentzellaw.com)  
**Attorney for Great Bay Condominium  
Owners Association, Inc.**

**CERTIFICATE OF SERVICE**

**I FURTHER CERTIFY** that on this the 15<sup>th</sup> day of November 2021, I caused a true and exact copy of the foregoing **PLAINTIFF GREAT BAY CONDOMINIUM OWNERS ASSOCIATION'S MOTION TO DISSOLVE OR MODIFY TEMPORARY RESTRAINING ORDER** to be filed using the Court's C-Track E-Filing system which will send notice, unless otherwise indicated below, of same:

**MARIA T. HODGE, ESQ.**  
Hodge & Hodge  
1340 Taarneberg  
St. Thomas VI 00802  
Tel: (340) 774-6845  
Fax: (340) 714-1848  
[maria@hodgelawvi.com](mailto:maria@hodgelawvi.com)

By:     /s/ Carolyn C. Duncan

**FILED**

May 27, 2022 04:33 PM  
SCT-Civ-2022-0002  
VERONICA HANDY, ESQUIRE  
CLERK OF THE COURT

# **EXHIBIT 1**

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

<u>GREAT BAY CONDOMINIUM OWNERS</u>	)	
<u>ASSOCIATION, INC.</u>	)	CIVIL NO. ST-18-CV-768
	)	
PLAINTIFF,	)	ACTION FOR DECLARATORY
V.	)	JUDGMENT, TO CANCEL DEED
	)	AND TO QUIET TITLE
THE NEIGHBORHOOD ASSOCIATION, INC.	)	
	)	
<u>DEFENDANT.</u>	)	

**AFFIDAVIT OF DAVID F. WENTZEL IN SUPPORT OF MOTION  
TO DISSOLVE OR MODIFY TEMPORARY RESTRAINING ORDER**


I, David F. Wentzel, depose and state as follows:

1. I am co-counsel *pro hac vice* for the Great Bay Condominium Owners Association, Inc. ("GBCOA"). I make this affidavit based on my personal knowledge and am competent to testify to the matters stated herein.
2. Attached hereto as Exhibit A is a true and correct copy of a letter that purports to be written by Margaret Rolando, outside counsel to the Marriott Vacation Club Trust Owners Association, Inc. ("the MVC Trust"), addressed to NA's Board of Directors and dated September 19, 2019. My legal assistant, Millie McManus, found Ms. Rolando's letter approximately four weeks ago in a random location within a 5,000-plus page supplemental document production NA made in ST-19-CV-650.
3. Upon being alerted to the letter by Ms. McManus, I personally investigated and reviewed the location of the letter within NA's supplemental document production. The letter was surrounded by totally unrelated documents and was detached from the email that transmitted the letter to NA's Board of Directors. I located that email in a

different random location in NA's supplemental document production some 1,100 pages away from the letter itself.

4. Attached hereto as Exhibit B is a true and correct printout of Ms. Rolando's professional bio, which I printed from Shutts & Bowen LLP's website.

I declare under penalty of perjury under the laws of the United States Virgin Islands that the foregoing is true and correct. Executed on November 15, 2021.

  
David F. Wentzel

# **EXHIBIT 1-A**



MARGARET A. ROLANDO P.A.  
 PARTNER  
 Shutts & Bowen LLP  
 200 South Biscayne Boulevard  
 Suite 4100  
 Miami, Florida 33131  
 DIRECT (305) 379-9144  
 FAX (305) 347-7744  
 EMAIL mrolando@shutts.com

September 19, 2019

VIA FEDERAL EXPRESS and EMAIL (naboardstthomas@gmail.com)

The Neighborhood Association, Inc.  
 Attention: Mr. Salvatore Cutrona  
 Mr. Marc Betesh  
 Mr. Enzo Orsini  
 6910 Great Bay  
 St. Thomas, Virgin Islands 00802

Dear members of the Board of Directors,

This firm represents Marriott Vacation Club Trust Owners Association ("MVC TOA"), an owner of Suites at The Club at Great Bay and a member of Neighborhood Association, Inc. (the "Company"). We are responding to your email, dated August 15, 2019 2:29 PM (Eastern), on behalf of the MVC TOA, wherein you requested the support of the members of the Company in connection with the dissolution of the Company. Of import, the MVC TOA appreciates the significant contributions of the directors to the governance of the Company. The MVC TOA recognizes that the Board members are volunteers and willingly donate their time to enhance the resort. The MVC TOA does not question the good faith of the Board.

After seriously considering the legal, business and practical consequences of dissolution of the Company, the MVC TOA is unable to support the Board's recommendations for the following reasons:

1. Liabilities not Addressed; Lack of Plan of Liquidation. The Company has not delivered a plan of liquidation detailing the orderly disposition of its assets and liabilities. Moreover, existing and contingent liabilities are not adequately addressed, including the pending lawsuit by Great Bay Condominium Owners Association, Inc. ("GBCOA") over CU-1 or the dispute over the settlement funds in escrow. The Board's resolution of dissolution and email both presume that the Company will prevail in the litigation and other disputes with GBCOA, which is not a certainty. A plan of liquidation should address the distribution of the Company's assets, including ownership and operation of CU-1 in the event the Superior Court of the Virgin Islands determines that the conveyance of CU-1 was not proper as a legal matter.

The MVC TOA understands that the Company may be subject to following claims and liabilities:

- Amounts due for property taxes on CU-1;
- Amounts due for Assessments to GBCOA on CU-1;
- Amounts due vendors or suppliers to the Company; and
- Amounts due attorneys for the Company in connection with representation of the Company on matters other than the defense of the lawsuit by GBCOA.

**NA Suppl 6/21 Bates No. 2924**

However, the Board has not disclosed the Company's liabilities in communications with the members, the amounts claimed or the intended source of payment. From a legal perspective, a dissolved corporation has the legal obligation to reserve funds for payment of its creditors, and a plan of liquidation should provide for disposition of those creditors' claims. While a plan of liquidation may not necessarily be required, it is certainly best practice, especially when there is so much uncertainty surrounding the Company's assets and liabilities.

2. Obligations of Suite Owners Not Eliminated by Dissolution. The Declaration of Condominium creating the Great Bay Condominium and the Supplementary Declaration of Condominium for The Club at Great Bay Condominium, as well as other documents include multiple references to the rights and obligations of the Company. These Declarations are covenants running with the land and impose on the Suite owners the obligation to pay assessments to support CU-1 regardless of whether the Company or another entity owns it. In order to eliminate the liability of the Suite owners for payment of the costs associated with the operation, maintenance, management and repair of CU-1 or spread such costs to all of the owners of Great Bay Condominium, these documents must be amended. The Company cannot unilaterally amend these documents. Furthermore, the revised documents must be filed with various regulatory authorities.

Although the Company attempted to convey CU-1 to GBCOA, such a transfer does not terminate the obligation of the Suites and Suite owners to pay assessments for ownership, management, operation and maintenance of CU-1. In fact, by virtue of such transfer, the Company loses control of the operation of the facility while the members retain the liability.

3. Potential for Personal Exposure of Members. The MVC TOA is especially concerned that in the event the Company dissolves, the members will be exposed to personal liability to any creditor or claimant of the Company. If a guest were seriously injured in CU-1, we can reasonably anticipate that the former directors and all of the members would be named in a lawsuit. Even if the plaintiff does not prevail, the attorneys' fees and costs for defense could be substantial.

4. Relinquishing Flexibility. The Company needs maximum flexibility in its negotiations with GBCOA. Liquidation of the Company severely restricts the Board's options.

5. Litigation Risk. The MVC TOA is also concerned that a precipitous dissolution would be perceived by the Superior Court of the Virgin Islands as a blatant attempt to circumvent the role of the court as decision maker and could hurt the Company's litigation position.

6. Board Exposure. The board members should be very cautious about proceeding with the proposed course of action. A corporation generally provides its members and directors with protection from personal liability for the acts resulting from its corporate activities. If corporate formalities are not observed and the corporation proceeds with distributions to the members before satisfying outstanding corporate debts, the directors can be held personally liable. In many jurisdictions the members of the last board of directors of a dissolved corporation serve as trustees and as such are held to a higher standard of care and have personal liability as fiduciaries.

**NA Suppl 6/21 Bates No. 2925**



The Neighborhood Association, Inc.  
September 19, 2019  
Page 3

For the foregoing reasons, the MVC TOA believes that dissolution of the Company is premature and ill-advised until the following occur:

- the litigation with the GBCOA and title to CU-1 is resolved;
- the Company and GBCOA negotiate and document a long term plan for maintenance, operation, repair and replacement of CU-1;
- a plan of dissolution is proposed and adopted by the members that addresses the orderly disposition of the assets and liabilities of the Company; and
- the various governing documents are amended to accurately reflect the legally established ownership of CU-1 and the obligations for its maintenance, operation, repair and replacement.

Should you have any questions, please contact me. Thank you.

Sincerely,

SHUTTS & BOWEN LLP



Margaret A. Rolando, P.A.

cc: Marriott Vacation Club Trust Owners Association

MIADOCs 18676875 4

NA Suppl 6/21 Bates No. 2926

# **EXHIBIT 1-B**



## MARGARET "PEGGY" A. ROLANDO

### PARTNER

MRolando@shutts.com

1-305-379-9144 - [Miami](#)

200 South Biscayne Boulevard, Suite 4100, Miami, FL 33131

Margaret A. ("Peggy") Rolando is a partner in the Miami office of Shutts & Bowen LLP, where she is a member of the Real Estate Practice Group. A Martindale-Hubbell AV® rated attorney, Peggy is Florida Bar Board Certified in Real Estate Law and in Condominium and Planned Development Law.

Peggy is a member of the American College of Real Estate Lawyers (ACREL) and is a past chair of the Real Property, Probate and Trust Law Section of The Florida Bar. She's also a long time active member of The Florida Bar Committee on Condominiums and Planned Developments. Peggy has been named one of the *Best Lawyers in America*® in real estate since 2010 and has been recognized by *Chambers USA - America's Leading Lawyers for Business*, *Florida Super Lawyers*, and *Florida Trend Magazine's Florida Elite* in real estate. She was also listed among the Top 50 Women Lawyers in Florida and Top 100 Lawyers in Miami.

### Experience

Peggy has a strong background in the acquisition, development, sale, financing and operation of large scale real estate projects. She has extensive experience in the creation and operation of condominiums, planned developments, mixed use projects, resorts, clubs and hotels, including regulatory matters, development, structuring, restructuring, documentation, termination and management.

She counsels developers in evolving flexible legal structures, preparing governing documentation, and filing documentation with the appropriate governmental agencies for the sale of lots and units, including compliance with the Florida Condominium Act and the Interstate Land Sales Full Disclosure Act (ILSA).

Peggy regularly advises clients on legal and operational aspects of hotel and resort condominiums and timeshare projects. She also offers guidance on operating community associations and making and defending construction defect claims, conducting meetings of members and of directors, and resolving disputes with developers, unit owners, other associations and property owners.



## Margaret "Peggy" A. Rolando

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Peggy has particular expertise in termination of condominiums having chaired or participated in the subcommittees responsible for drafting proposed statutory revisions to the termination provisions in the Florida Condominium Act and represented clients in pursuing efficient and effective termination strategies.

Peggy's experience in condominiums, master planned communities and mixed use developments provides an exceptional background for advising clients on the sale, purchase and operation of distressed real estate, particularly fractured condominiums and land developments. She works with lenders, bulk investors and receivers to craft and implement exit strategies for condominium and non-condominium residential, commercial and mixed use projects.

### **Professional and Community Involvement**

Peggy is a respected speaker at the national level on development, structuring and workouts of condominiums and planned developments. She has also presented at Florida seminars on acquisition and sale issues and condominium, planned community and mixed use topics and has published and co-authored articles on community associations, mixed-use developments, workouts, and other real estate topics.

Outside of her practice, Peggy serves on the Board of Trustees of Spring Hill College in Mobile, Alabama. She was a member of the Board of Trustees of Florida State University and has been a member of the Board of Visitors of Florida State University College of Law since 1994. Peggy is a member of the Board of Trustees of The Ringling Museum in Sarasota and the Board of Advisors of the Georgia Museum of Art in Athens. She also serves on the City of Coral Gables Historic Preservation Board.

### **Practice Areas**

Real Estate

Hospitality

Community Associations

Construction

### **Industry Focus**

Hospitality

Construction

Real Estate



## Margaret "Peggy" A. Rolando

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### Accolades

- Florida Bar Board Certified in Condominium and Planned Development Law
- Florida Bar Board Certified in Real Estate Law
- [Martindale-Hubbell AV® Preeminent™ Rated, 5.0 out of 5.0](#)
- *Chambers USA: America's Leading Lawyers for Business*, Real Estate, 2011-2021
- *Best Lawyers in America®*, Real Estate Law, 2010-2016, 2018, 2019, 2020, 2021, 2022
- *Florida Trend's Florida Legal Elite*, Real Estate, 2007-2011, 2017, 2020
- *Florida Super Lawyers*, Real Estate, 2007-2021
- *Florida Super Lawyers*, Top 50 Women Lawyers in Florida, 2008, 2013, 2019, 2020, 2021; Top 100 Lawyers in Miami, 2016, 2019, 2020, 2021
- *Who's Who Legal*, Real Estate, 2011-2017

### Education

- Florida State University, J.D., with honors, 1978
- Florida State University, M.A., 1974
- Spring Hill College, B.A., *magna cum laude*, 1972

### Bar Admissions

Florida

### Professional and Civic

- American College of Real Estate Lawyers
  - Board of Governors (2006-2009 and 2014-2019)
  - Fellow (2000-present)
  - Chair of Communications Committee (2016-2018)
  - Chair of Programs Committee (2012-2013)
  - Vice Chair of Common Interest Ownership Committee (2009-2011)
  - Member, Member Selection Committee (2019-present)
- Real Property, Probate & Trust Law Section of The Florida Bar
  - Immediate Past Chair (2014-2015)
  - Chair (2013-2014)

## Margaret "Peggy" A. Rolando

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- Chair-Elect (2012-2013)
- Real Property Division Director (2010-2012)
- Executive Committee (2006-2015)
- Executive Council (1993-present)
- Condominiums and Planned Development Committee (1980-present)
- Commercial Real Estate Committee (2012-present)
- The Florida Bar
  - Condominium and Planned Development Law Certification Committee
    - Chair (2016-2018); Member (2016-present)
- City of Coral Gables Historic Preservation Board (2008-2017) (2020-present)
- Board of Trustees, Florida State University (2010-2015)
- Board of Visitors, Florida State University College of Law (1994-present)
- Board of Trustees, Spring Hill College (2000-2009 and 2015-present)
- Board of Advisors, Georgia Museum of Art (1992-present)
- Board of Directors, The Ringling Museum of Art (2015-present)
- Board of Trustees, Seraphic Fire (2014-present)
- Florida Developers Counsel (group of attorneys in Miami-Dade, Broward, Palm Beach, Orange and Hillsborough County with sophisticated development practices), Member (2007-present)

### Presentations

- Presenter and Panelist: Topic: "Policy Issues, Future Trends and Changes in Condominium and Community Association Law and Governance" at the 46<sup>th</sup> Annual Ralph E. Boyer Institute on Condominium and Cluster Development, 10/7/21, West Palm Beach, sponsored by University of Miami School of Law
- Presenter and Panelist: Topic: "Peace Treaties Between Community Associations and Developers — Construction Management; Assessments & Contributions; Developer Rights; Easements; Community Association Amenities and Services" at the 46<sup>th</sup> Annual Ralph E. Boyer Institute on Condominium and Cluster Development, 10/7/21, West Palm Beach, sponsored by University of Miami School of Law
- Presenter, Topic: "Advanced Commercial Real Estate Finance" at the *Real Property Law Certification Review Course*, webinar, recorded on 3/30/21, with live question and answer session on 4/29/21, sponsored by The Florida Bar, Real Property, Probate and Trust Law Section.
- Presenter, Topic: "Land Condominiums – Avoidance of Platting and Subdivision Requirements – Drafting and Planning Issues" at the *Forty-Fifth Institute on Condominiums and Planned Developments*, 10/30/20, webinar sponsored by University of Miami School of Law.

## Margaret "Peggy" A. Rolando

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- Presenter, Topic: "Advanced Commercial Real Estate Finance" at the *Real Property Law Certification Review Course*, webinar on 7/20/20, sponsored by The Florida Bar, Real Property, Probate and Trust Law Section.
- Presenter and Panelist, Topic: "The Ethical (and Practical) Aspects of Engagement Letters for Real Estate, Probate, Trust and Estate Planning Matters," webinar on 2/12/20, sponsored by The Florida Bar, Real Property, Probate and Trust Law Section and the Professionalism and Ethics Committee.
- Presenter and Panelist, Topic: "Title Issues Created by Condominium Terminations" at the *Forty-Fourth Institute on Condominiums and Planned Developments*, 10/3/19, Boca Raton, sponsored by University of Miami School of Law
- Presenter and Panelist, Topic: "Operating Multi-, Phased and Series Condominiums - What You Need to Know" Webinar on 6/19/19 sponsored by The Florida Bar, Real Property, Probate and Trust Law Section and the Condominium and Planned Development Committee
- Presenter and Panelist, Topic: "Condominium Terminations: Title Issues and Analysis" at the FLTA Annual Claims Round Table, 4/26/19, Orlando, sponsored by the Florida Land Title Association
- Presenter and Panelist, Topic: Forty-Third Institute on Condominiums and Planned Developments, 11/1/18, "Structuring and Operating Phase and Series (Multi-Condominium) Condominium Developments," Boca Raton, sponsored by University of Miami School of Law
- Presenter and Panelist, Topic: "Condominium Construction Loans" at the seminar *The Ins and Outs of Community Association Law 2017*, sponsored by The Florida Bar, Real Property, Probate and Trust Law Section and the Condominium and Planned Development Committee (April 28, 2017)
- Co-Presenter, "Representing A Buyer of a Unit in a Vertical Mixed Use Project: Is Your Client Just Buying Air? Part II", presented by The Florida Bar's CLE Committee and the Real Property, Probate and Trust Law Section (February 2, 2017)
- Co-Presenter, "Representing A Buyer of a Unit in a Vertical Mixed Use Project: Is Your Client Just Buying Air? Part I", presented by The Florida Bar's CLE Committee and the Real Property, Probate and Trust Law Section (January 26, 2017)
- Faculty Member and Panelist, "Commercial Real Estate Financing: Strategies, Structure, and Documentation," Miami, American Law Institute - Continuing Legal Education (ALI-CLE) (June 9-10, 2016)
- Panelist, "A Bird's Eye View of Real Estate Development: Perspectives from Developers, Contractors, Attorneys, and the Government," Miami, Dade County Bar Association/Real Estate Committee (January 26, 2016)
- Presenter and Panelist, "Who's the Client? Ethical Issues in Complex Corporate Structures for Inside and Outside Counsel," webcast, American Law Institute-Continuing Legal Education (ALI-CLE) (November 18, 2015)

## Margaret "Peggy" A. Rolando

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- Presenter and Panelist, "Condominium Reversions – The Unspoken Condominium Termination Opportunity – Issues, Policies and Solutions – Recent Statutory Developments," Fortieth Institute on Condominiums and Planned Developments, Boca Raton, University of Miami School of Law (October 30, 2015)
- Presenter, "Termination of Condominiums in Florida: Recent Developments," Palm Beach, Commercial Real Estate Committee of The Florida Bar, Real Property, Probate and Trust Law Section (July 30, 2015)
- Presenter, "Informed Consent: Representing Buyers of Residential or Commercial Units in a Mixed-Use, Multiple-Owner Project," 51st Annual Fund Assembly, Orlando, Attorneys' Title Insurance Fund, Inc. (May 9, 2015)
- Presenter and Panelist, "Condominium Termination: Challenges, Issues and Unique Fact Patterns," Thirty-Ninth Institute on Condominiums and Planned Developments, Boca Raton, University of Miami School of Law (October 23, 2014)
- Presenter and Panelist, "Multijurisdictional Ethical Traps for Real Estate Lawyers," webcast, American Law Institute-Continuing Legal Education (ALI-CLE) (December 10, 2013)
- Presenter and Panelist, "[Anatomy of a Community Association Turnover Meeting: Best Practices in Planning and Executing a Successful Transition of Control](#)," webcast, American Law Institute-American Bar Association (ALI-ABA) (April 3, 2012)
- Presenter and Panelist, "Bulk Sales & Purchases of Distressed Condominium Units," webcast, ALI-ABA (January 31, 2012)
- Presenter and Panelist, "ILSA Update, Contract Claims and Bulk Buyers," live presentation and webcast, Community Association Law Issues 2011 Edition, The Florida Bar, Real Property, Probate and Trust Law Section and Condominium and Planned Development Committee (April 15, 2011)
- Presenter and Panelist, "The Anatomy of an Owner's Turnover Meeting: Best Practices in Planning and Executing a Successful Transition of Control," live presentation and webcast, Tampa, Current Issues in Condominium and Community Association Law: What All Practitioners Need to Know, sponsored by The Florida Bar, Real Property, Probate and Trust Law Section and Condominium and Planned Development Committee (April 16, 2010)
- Presenter, "Condos & Planned Communities: Bulk Sale of Units, Homes and Lots in Today's Shifting Economy," ALI-ABA (2009)
- Presenter, "ILSA [Interstate Land Sales Full Disclosure Act]: The Sword and Shield of Residential Real Estate Contracts," teleseminar, ALI-ABA (November 12, 2009)
- Presenter and Panelist, "Issues in Distressed Common Interest Ownership Communities," Washington, D.C., Fall Meeting of American College of Real Estate Lawyers (ACREL) (October 31, 2009).
- Moderator and Panelist, "Fractured Condominiums: Successor Developer Issues and Exit Strategies," Hollywood, Florida, Distressed Multi-Family and Fractured Condominium Symposium



## Margaret "Peggy" A. Rolando

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sponsored by Community Planning Associates (October 8, 2009)

- Presenter and Panelist, "When Banks Take Over Projects (Panel Presentation from Perspective of a Lender, Developer and Contractor)," Construction Law Institute, Orlando, The Florida Bar, Real Property, Probate and Trust Law Section and Construction Law Committee (March 7, 2009)
- Lecturer, "Construction Lending" Advanced Construction Law & Certification Review Course, Orlando, The Florida Bar, Real Property, Probate and Trust Law Section and Construction Law Committee (March 6, 2009)
- Faculty Member, "Drafting (and Re-Drafting) Documents for Condominiums and Planned Communities in Troubled Times," San Antonio, ALI-ABA (February 26-28, 2009)
- Planning Chair and Presenter, "Condos & Planned Communities: Bulk Sale of Units, Homes and Lots in Today's Shifting Economy," webcast, ALI-ABA (January 12, 2009)
- Panelist, "Termination: Effects of New Legislation on Condo Regimes – Natural vs. Developer-Made Disasters and Fixes," Thirty-Third Institute on Condominiums and Planned Developments, Ft. Lauderdale, sponsored by University of Miami School of Law (October 17, 2008)
- Panelist, "Dealing with Difficult Opposing Counsel, Clients & Colleagues," Miami, Professionalism Workshop sponsored by Dade County Bar Association/Young Lawyers' Section (October 3, 2008)
- Panelist, "Defending Your Professionalism in the Face of Increasing Unprofessionalism," Florida Bar Annual Convention, Boca Raton, The Florida Bar Standing Committee on Professionalism (June 19, 2008)
- Presenter and Moderator, "The New Age of Condominium Workouts – Perspectives from all Angles," 2008 ABA Real Property, Trust and Estate Law Section Annual Spring Symposium
- Speaker, "Condominium Conversions," ABA, 5/1/08, Washington, D.C., sponsored by the American Bar Association Real Property, Trust and Estate Law Section Meeting (2006)
- Planning Chair and Presenter, "Distressed Condominium Projects - a Survival Guide in Uncertain Financial Times," webcast, ALI-ABA (March 4, 2008)
- Faculty Member, "Drafting Documents for Residential and Mixed Use Condominiums and Planned Communities," New Orleans, ALI-ABA (February 7-9, 2008)
- Presenter and Moderator, "Condominium Workouts: A Survival Guide," webcast, ALI-ABA (November 28, 2007)
- Presenter and Moderator, "The Condo Glut – A Survival Guide for Condominium Workouts," Miami Beach, Main Program and 2 Workshops at Fall Meeting of ACREL (October 13, 2007)
- Lecturer, "Condominium Termination: Past and Future," 27th Annual Legislative Update & Recent Case Review, Palm Beach, The Florida Bar, Real Property, Probate and Trust Law Section (August 3, 2007)
- Faculty Member, Drafting Documents for Condominiums, Planned Communities and New Urbanism Developments, Scottsdale, ALI-ABA (February, 22-24, 2007)

## Margaret "Peggy" A. Rolando

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- Lecturer, and Panelist, "Sleepless Nights: Unit Owner and Management Issues in Hotel Unit Rental and Management Agreements," Thirtieth-First Institute on Condominiums and Planned Developments, University of Miami School of Law (October 19, 2006)
- Lecturer, "Condominiums: Legislative, Case Law and Regulatory Update," 26th Annual Legislative Update & Recent Case Review, Palm Beach, The Florida Bar, Real Property, Probate and Trust Law Section (August 11, 2006)
- Panelist, "Condominium Conversions," 2006 ABA Real Property, Trust and Estate Law Section Annual Spring Symposium, San Diego (May 5, 2006)
- Panelist, "Structuring the Regime and the Fundamentals of Condominium Thought," "The Declaration of Condominium: The Core of the Issue," "Disclosure Requirements under Florida Law," and "The Association's Corporate Governance Documents and Budgets" So You Want to be a Condominium Developer's Attorney?, Tampa, The Florida Bar, Real Property, Probate and Trust Law Section and Condominium and Planned Development Committee (March 24, 2006)
- Panelist, "The Interstate Land Sales Act: Not Your Garden-Variety Song and Dance," Ins and Outs of Florida Condominium Law - 2006 Edition, Tampa, The Florida Bar, Real Property, Probate and Trust Law Section and Condominium and Planned Development Committee (March 23, 2006)
- Faculty Member, Drafting Documents for Condominiums, Planned Communities and New Urbanism Developments, San Antonio, ALI-ABA (March 2-5, 2006)
- Panelist, "Legal Issues and Other Risks in Condominium and Mixed Use Developments," Condominium Summit 2006, Ft. Lauderdale, Commercial Property News (January 5, 2006)
- Lecturer, and Panelist, "Termination Issues and Proposed Solutions – Facilitating Reconstruction and Redevelopment," Thirtieth Institute on Condominiums and Planned Developments, University of Miami School of Law (November 16, 2005)
- Panelist, Topic: "Disgruntled Clients and Angry Third Parties: Real Estate Lawyer Conflicts of Interest and Potential Liability to Clients and Non-Clients," 2005 Joint Fall CLE Meeting, San Francisco, ABA Real Property, Probate and Trust Law Section (September, 16, 2005)
- Presenter and Workshop Leader, "Ethics in Real Estate Transactions," Miami, Annual Conference of International Association of Attorneys and Executives in Corporate Real Estate (April 15-16, 2005)
- Presenter, "The Not So Simple Life: Interstate Land Sales Issues in Condominium and Mixed Use Developments," Tucson, AZ, Main Program and 2 Workshops at Spring Meeting of American College of Real Estate Lawyers (March 19, 2005)
- Lecturer and Panelist, "Termination of a Condominium: What You Need to Consider," Ins and Outs of Condominiums and Communities, Orlando, The Florida Bar, Real Property, Probate and Trust Law Section and Condominium and Planned Development Committee (March 11, 2005)
- Faculty Member, "Drafting Documents for Condominiums, Planned Communities and New Urbanism Developments," Miami, ALI-ABA (February 3-5, 2005)

## Margaret "Peggy" A. Rolando

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- Panelist, "Eyes Wide Open: a Checklist for Buyers of Residential Units in a Mixed Use Project," Twenty-Ninth Institute on Condominiums and Planned Developments, Miami, University of Miami School of Law (October 30, 2004)
- Lecturer and Panelist, "Structuring the Community Development: the Tricks and the Traps with an Emphasis on Mixed Use, Multiple Owner Projects," Ins and Outs of Condominiums and Communities, Orlando, The Florida Bar, Real Property, Probate and Trust Law Section and Condominium and Planned Development Committee (March 25, 2004)
- Panelist, "Ethical Dilemmas: Ethical and Practical Considerations in Third Party Real Estate Opinions," 39th Annual Fund Assembly, Orlando, Attorneys' Title Insurance Fund, Inc. (May 16, 2003)
- Panelist, "Evolving Issues in Mixed Use Developments," 27th Institute on Condominiums and Planned Developments, Miami, University of Miami School of Law (October 24, 2002)
- Panelist, "Commercial Lease Negotiations: Hot Topics," Real Property Seminar at Annual Section Convention, The Florida Bar, Real Property, Probate and Trust Law Section and the Landlord-Tenant Committee (May 25, 2001)
- Lecturer, "Structuring the Mixed Use Development: Planning and Drafting Perspectives," Twenty-Fifth Institute on Condominiums and Planned Developments, Miami, University of Miami School of Law (October 26, 2000)

### Publications

- Co-author, "Planning and Structuring of Real Estate Developments Using Condominium and Owners' Associations," Chapter 3, *Florida Condominium and Community Association Law* published by The Florida Bar (Continuing Legal Education (2007, revised 2011, 2013, 2016 and 2018)
- Co-author, "The Condo Glut - A Survival Guide for Condominium Workouts," American College of Real Estate Lawyers, *The ACREL Papers*, Fall 2007
- Author, "[Making and Encouraging Pre-Sale Disclosures](#)," 23 *The Practical Real Estate Lawyer* 57 (July 2007)
- Author, "[Governing Documents for Mixed Use Developments](#)," 22 *The Practical Real Estate Lawyer* (January 2006)
- Author, "How to Enforce Small Value Liens for the Community Association," 15 *The Practical Real Estate Lawyer* 49 (September 1999)
- Contributor, "Set Lower Sales Minimum for Your Exercise of 'Performance Kickout,'" *Commercial Lease Law Insider* (August 1998)



Margaret "Peggy" A. Rolando

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### In The News

- [Florida Bar Certifies 129 Attorneys in Condominium, Planned Development Law](#)

# **EXHIBIT 2**

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

<u>GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.</u>	)	
	)	<b>CIVIL NO. ST-18-CV-768</b>
	)	
<b>PLAINTIFF,</b>	)	<b>ACTION FOR DECLARATORY</b>
<b>V.</b>	)	<b>JUDGMENT, TO CANCEL DEED</b>
	)	<b>AND TO QUIET TITLE</b>
<u>THE NEIGHBORHOOD ASSOCIATION, INC.</u>	)	
	)	
<b>DEFENDANT.</b>	)	

**AFFIDAVIT OF ABIGAIL CHUNG IN SUPPORT OF MOTION  
TO DISSOLVE OR MODIFY TEMPORARY RESTRAINING ORDER**

I, Abigail Chung, depose and state as follows:

1. I am an adult resident of Southlake, Texas and am competent to testify to the matters stated herein, which are based on my personal knowledge.
2. I am the President of Great Bay Condominium Owners Association, Inc. ("GBCOA"). I have served on GBCOA's Board of Directors continuously since 2010. In 2011 and 2012, I was Treasurer of GBCOA. From 2013 through 2018, I served as Vice President of GBCOA. For the past three years and continuing to the present, I have served as President of GBCOA.
3. Up until my retirement in 2014, I worked at Johnson & Johnson in differing roles for 30 years. I had management roles in Finance, Mergers and Acquisitions, Worldwide Operations, and Contract Strategy and Management.
4. Attached hereto as Exhibit A is a true and correct copy of a document titled "St. Thomas Inventory Stats." I received this document in the ordinary course of business from Stacey Jackson-Rauso. I have personal knowledge, based on countless interactions with Ms. Jackson-Rauso over the years, that she has a number of roles with Marriott

Vacations Worldwide, which serves as a sort of overarching “umbrella” organization for various Marriott/Ritz-Carlton entities.

5. As reflected in Exhibit A hereto, as of September 30, 2021, both the Developer of The Ritz-Carlton Club, RC Hotels (Virgin Islands), Inc. (hereinafter “the Developer”) and the Marriott Vacation Club Trust (hereinafter “MVC Trust”) own multiple Residence Interests in the Suites, which are located in Buildings G and H of the Great Bay Condominium. By virtue of these ownership interests, the Developer and MVC Trust are mandatory members of the Neighborhood Association (“NA”).

6. Combined, the Developer and the MVC Trust own 141 out of a total of 288 Residence Interests in the Suites. This translates to a combined 49% of the voting interests in NA.

7. GBCOA also owns a Residence Interest in the Suites and, by virtue of such ownership interest, is a member of NA.

8. I was recently made aware of the letter that Margaret Rolando of the law firm of Shutts & Bowen LLP wrote to NA’s Board of Directors dated September 19, 2019. NA has never disclosed any of Ms. Rolando’s opinions or conclusions as stated in her letter to GBCOA, or to my knowledge, to any of NA’s other members except the MVC Trust, which Ms. Rolando copied on her letter.

9. Ms. Rolando did not discuss her opinions and conclusions regarding the liability of the Suite owners to pay all costs and expenses relating to ownership, operation, maintenance and repair of CU-1 with any of GBCOA’s directors. Had Ms. Rolando done so, I would have been made aware of that fact based on standard communication practices followed by GBCOA’s directors. To my knowledge, Ms. Rolando derived her

opinions and conclusions about the Suite owners' liability to pay CU-1 dues and expenses independently of the identical conclusions reached by GBCOA's Board of Directors.

10. Attached hereto as Exhibit B is a true and correct copy of a letter that I received via email from Richard J. Hayward. Based on my personal observations and interactions with Mr. Hayward, I am aware he has multiple roles with Marriott/Ritz-Carlton. For example, in the attached letter, Mr. Hayward goes by "SVP, Vacation Ownership" of RC St Thomas, LLC. I know from personal knowledge that in addition to acting on behalf of the Developer from time to time, RC St. Thomas, LLC is the managing agent for the both GBCOA and NA.

11. In other correspondence I have received from Mr. Hayward, including very recently, he goes by "Senior Vice President, Vacation Ownership America's West," which I understand is affiliated with Marriott Vacations Worldwide.

12. As Mr. Hayward's letter attached as Exhibit B reflects, RC St. Thomas, as managing agent for the Developer, paid the Developer's portion of the CU-1 assessments that GBCOA invoiced through its outside vendor, Concord, to the Suite owners. This remittance was made on November 12, 2021 in the amount of \$28,993.47. As Mr. Hayward notes in his letter, this amount does not include any late fees or penalties. Mr. Hayward's letter explains that RC St. Thomas, LLC received incorrect wiring instructions, resulting in a one-day delay in transmittal of its payment of the Developer's portion of the CU-1 dues and assessments for 2017 through 2021.

13. Attached hereto as Exhibit C is a true and correct copy of an email communication that NA sent to the Suite owners on November 13, 2021, after the Court entered its temporary restraining order. As a result of this email communication, multiple




Suite owners have made written demand on GBCOA to refund their payment of the CU-1 assessments for 2017 through 2021. In my opinion based on my observations and experience over the past eleven years as a member of GBCOA's Board of Directors, there is a reasonable expectation that the rest of the Suite owners also will demand a refund of their payment of the CU-1 dues for 2017 through 2021.

14. Based on my personal observations and interactions with GBCOA's members, various statements contained in the TRO have caused serious and irreparable harm to GBCOA's reputation, credibility and ability to effectively administer the Great Bay Condominium in accordance with the governing declarations. The injurious statements in the TRO include the statements that GBCOA "has initiated an unlawful and improper campaign" to assess the Suite owners for past-due CU-1 assessments based on a "dubious interpretation of the governing condominium documents"; and that GBCOA issued the invoices "[i]n pursuit of its evasion of the authority of the Court to decide that claim."

15. GBCOA did none of these things. To the contrary, as reflected in the notice that accompanied the invoices GBCOA issued to the Suite owners for the CU-1 assessments, a true and correct copy of which is attached hereto as Exhibit C, GBCOA's position regarding the Suite owners' personal responsibility to pay the CU-1 assessments is based on the plain language in numerous portions of the governing declarations, which GBCOA quotes verbatim in the notice. As noted, both Ms. Rolando in her capacity as outside counsel to the MVC Trust and the Developer who wrote the declarations agree with GBCOA's position.

I declare under penalty of perjury that foregoing is true and correct. Executed in  
St. Thomas, United States Virgin Islands, on November 15, 2021.

  
\_\_\_\_\_  
Abigail Chung

# **EXHIBIT “2-A”**

**ST. THOMAS INVENTORY STATS**  
**INVENTORY AS SEPTEMBER 30, 2021**

Quarter 3, 2021						
Project	Bed Type	COA Owned or Assigned Interests	MVC Trust Interests	Developer Interests	Member - Owned Interests	Total Resort Interests
RCC St. Thomas Suites	2bdrm	1	133	8	146	288
RCC St. Thomas	2bdrm	5	68	9	458	540
RCC St. Thomas	3bdrm	3	43	7	379	432
<b>RCC St Thomas Total</b>		<b>9</b>	<b>244</b>	<b>24</b>	<b>983</b>	<b>1,260</b>
		0.7%	19.4%	1.9%	78.0%	

Quarter 2, 2021						
Project	Bed Type	COA Owned or Assigned Interests	MVC Trust Interests	Developer Interests	Member - Owned Interests	Total Resort Interests
RCC St. Thomas Suites	2bdrm	1	130	8	149	288
RCC St. Thomas	2bdrm	5	64	9	462	540
RCC St. Thomas	3bdrm	3	40	6	383	432
<b>RCC St Thomas Total</b>		<b>9</b>	<b>234</b>	<b>23</b>	<b>994</b>	<b>1,260</b>
		0.7%	18.6%	1.8%	78.9%	

Quarter 1, 2021						
Project	Bed Type	COA Owned or Assigned Interests	MVC Trust Interests	Developer Interests	Member - Owned Interests	Total Resort Interests
RCC St. Thomas Suites	2bdrm	1	130	5	152	288
RCC St. Thomas	2bdrm	5	64	7	464	540
RCC St. Thomas	3bdrm	2	40	5	385	432
<b>RCC St Thomas Total</b>		<b>8</b>	<b>234</b>	<b>17</b>	<b>1,001</b>	<b>1,260</b>
		0.6%	18.6%	1.3%	79.4%	

Quarter 4, 2020						
Project	Bed Type	COA Owned or Assigned Interests	MVC Trust Interests	Developer Interests	Member - Owned Interests	Total Resort Interests
RCC St. Thomas Suites	2bdrm	1	130	4	153	288
RCC St. Thomas	2bdrm	5	64	6	465	540
RCC St. Thomas	3bdrm	1	40	4	387	432
<b>RCC St Thomas Total</b>		<b>7</b>	<b>234</b>	<b>14</b>	<b>1,005</b>	<b>1,260</b>
		0.6%	18.6%	1.1%	79.8%	

Quarter 3, 2020						
Project	Bed Type	COA Owned or Assigned Interests	MVC Trust Interests	Developer Interests	Member - Owned Interests	Total Resort Interests
RCC St. Thomas Suites	2bdrm	1	130	4	153	288
RCC St. Thomas	2bdrm	5	64	4	467	540
RCC St. Thomas	3bdrm	1	40	4	387	432
<b>RCC St Thomas Total</b>		<b>7</b>	<b>234</b>	<b>12</b>	<b>1,007</b>	<b>1,260</b>
		0.6%	18.6%	1.0%	79.9%	

Quarter 2, 2020						
Project	Bed Type	COA Owned or Assigned Interests	MVC Trust Interests	Developer Interests	Member - Owned Interests	Total Resort Interests
RCC St. Thomas Suites	2bdrm	1	130	4	153	288
RCC St. Thomas	2bdrm	4	64	4	468	540
RCC St. Thomas	3bdrm	1	40	4	387	432
<b>RCC St Thomas Total</b>		<b>6</b>	<b>234</b>	<b>12</b>	<b>1,008</b>	<b>1,260</b>
		0.5%	18.6%	1.0%	80.0%	

Quarter 1, 2020						
Project	Bed Type	COA Owned or Assigned Interests	MVC Trust Interests	Developer Interests	Member - Owned Interests	Total Resort Interests
RCC St. Thomas Suites	2bdrm	1	130	4	153	288
RCC St. Thomas	2bdrm	4	64	4	468	540
RCC St. Thomas	3bdrm	1	40	4	387	432
<b>RCC St Thomas Total</b>		<b>6</b>	<b>234</b>	<b>12</b>	<b>1,008</b>	<b>1,260</b>
		0.5%	18.6%	1.0%	80.0%	

Quarter 4, 2019						
Project	Bed Type	COA Owned or Assigned Interests	MVC Trust Interests	Developer Interests	Member - Owned Interests	Total Resort Interests
RCC St. Thomas Suites	2bdrm	1	130	3	154	288
RCC St. Thomas	2bdrm	4	64	3	469	540
RCC St. Thomas	3bdrm	1	40	4	387	432
<b>RCC St Thomas Total</b>		<b>6</b>	<b>234</b>	<b>10</b>	<b>1,010</b>	<b>1,260</b>
		0.5%	18.6%	0.8%	80.2%	

# **EXHIBIT “2-B”**

## RC St. Thomas, LLC

November 12, 2021

**VIA E-Mail**

Board of Directors  
Great Bay Condominium Owners Association, Inc.  
c/o 6910 Great Bay  
St. Thomas, U.S. Virgin Islands  
Attn: Abbey Chung, President of GBCOA

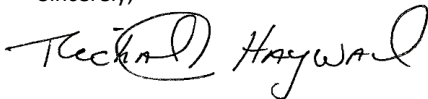
Dear Ms. Chung,

It was a pleasure speaking with you on Thursday, November 11, regarding the "special billing" to the Neighborhood Association, Inc. members relating to the Commercial Unit 1 in Great Bay Condominium, and RC St. Thomas, LLC's remittance of \$28,993.47 associated with payment of such "special billing" for interests owned. As you will have noted, the amount remitted did not include any interest or penalties.

As you may know, the billing instructions did not provide information for the wiring of funds and after making a telephone call to Concord, we received incorrect wiring instructions and once again had to contact them for proper instructions. In that regard, our payment was wired on November 9 and received on November 10. We are therefore respectfully asking the board to waive the interest and penalties.

We look forward to hearing the board's decision on this request.

Sincerely,



Richard J. Hayward  
SVP, Vacation Ownership

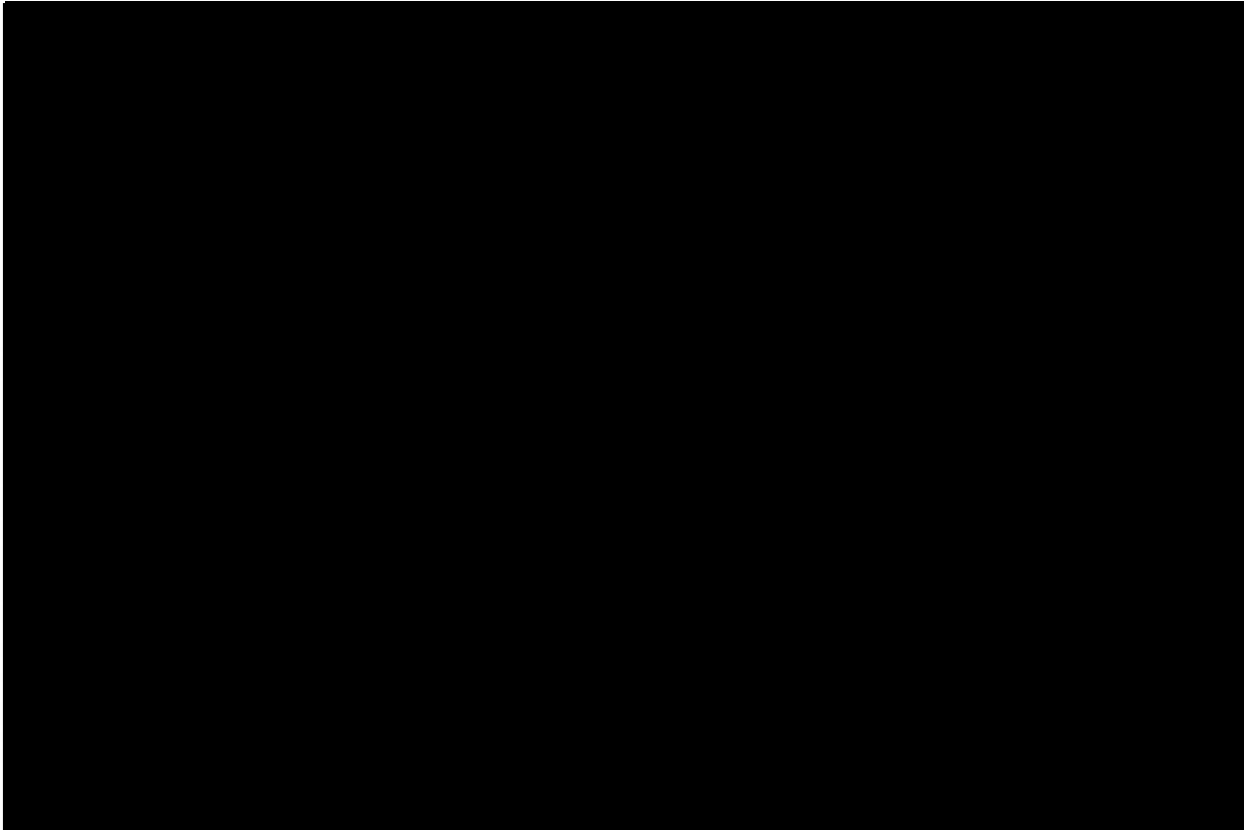
Cc: Great Bay Condominium Owners Association, Inc. Board of Directors

**A.000176**

# **EXHIBIT “2-C”**



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**From:** NEIGHBORHOOD ASSOCIATION <naboardstthomas@gmail.com>  
**Date:** November 13, 2021 at 1:32:47 PM AST  
**To:** NEIGHBORHOOD ASSOCIATION <naboardstthomas@gmail.com>  
**Cc:** NEIGHBORHOOD ASSOCIATION <naboardstthomas@gmail.com>  
**Subject:** Re: US VIRGIN ISLAND SUPERIOR COURT ORDERS GBCOA TO RESCIND THE INVOICES SENT TO NA MEMBERS FOR DUES AND COMMON CHARGES FOR CU-1!

**THE NEIGHBORHOOD ASSOCIATION, INC.**

6910 Great Bay  
St. Thomas, V.I. 00802

November 13, 2021

**Re: US VIRGIN ISLAND SUPERIOR COURT ORDERS GBCOA TO RESCIND THE INVOICES SENT TO NA MEMBERS FOR DUES AND COMMON CHARGES FOR CU-1!**

Dear Suite Owners of the Ritz-Carlton Destination Club, St. Thomas:

Yesterday November 12, 2021 in the afternoon, The Neighborhood Association, Inc., (NA) Board of Directors filed a **MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION** in the Superior Court of the US Virgin Islands with a copy to the Honorable Renee Gumbs-Carty, Judge of the Superior Court of the Virgin Islands assigned to the legal suit brought by *Great Bay Condominium Owners Association, Inc., the Plaintiff against The Neighborhood Association, Inc., the Defendant, in CASE NO. ST-18-CV-768: ACTION FOR DECLARATORY JUDGMENT, TO CANCEL DEED AND TO QUIET TITLE*. NA's **MEMORANDUM IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION** and the **AFFIDAVIT OF SALVATORE M. CUTRONA, SR IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION** as filed is a matter of public record. If you care to read the filing, please respond to this email and we will be glad to send it to you.

We are pleased to announce that at 5:35 pm AST yesterday, NA Counsel, Maria Tankenson Hodge, Esq., of Hodge & Hodge, was notified by the Judge of an **ORDER** (attached below) to appear for a Status Conference in the matter of *CASE NO. ST-18-CV-768 ACTION FOR DECLARATORY JUDGMENT TO CANCEL DEED AND TO QUIET TITLE* on Tuesday, November 16, 2021. In addition, the Judge issued an **ORDER FOR TEMPORARY RESTRAINING ORDER** (attached below) in the same case that reads as follows:

***NOW, THEREFORE, IT IS HEREBY ORDERED that Great Bay, and all persons acting in concert with Great Bay, be and are hereby ordered to rescind the invoices to NA members for dues and common charges for CU-1, and from taking any action to impose a lien related thereto, or from taking any steps to Lock Out or otherwise impair, restrain, or obstruct in any way the use of NA's members or their residences, condominiums, or the common areas at the Ritz-Carlton, or other membership rights and amenities, for a period of fourteen (14) days from the date of this order, commencing on the date and hour set forth below, and it is further ORDERED that this matter shall come on for hearing upon NA's motion for a preliminary injunction to continue the order here entered on November 19, 2021, at 10:00 am AST, in the Superior Court of the Virgin Islands with an invitation to issue by the Clerk of the Court to the parties and their witnesses.***

***SO ORDERED this 12th day of November 2021, at 5:20 p.m. AST***

**BY: Renee Gumbs-Carty  
HONORABLE RENNE GUMBS-CARTY  
JUDGE OF TH SUPERIOR COURT**

As we have previously stated in our correspondence to each of you re:the GBCOA CU-1 assessment billing, we now clearly state that **YOU SHOULD NOT PAY THE 10-20-21 INVOICE FROM THE GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC. FOR COMMERCIAL UNIT (CU-1) ASSESSMENTS FOR THE YEARS 2017 THROUGH 2021 that you received from GBCOA on 10-20-21.** Hopefully, you will also be receiving shortly a correspondence from the GBCOA rescinding that billing. For those that may have already paid the CU-1 assessment, we suggest that you immediately request a full refund from GBCOA in writing via email to them

at [boardstthomas@aol.com](mailto:boardstthomas@aol.com) with a copy to the Director of Finance of The Ritz-Carlton Club, St. Thomas, Ms. Marsha Leighton-Hermann at [marsha.leighton-hermann@ritzcarlton.com](mailto:marsha.leighton-hermann@ritzcarlton.com).

We will keep you apprised of any new developments and the results of the scheduled court meetings next week. For now, **do not pay the invoice you received from GBCOA for the back assessments for CU-1.**

Thank you for your time, your patience, and your attention to the truth in this matter.

—ORDER FOR TEMPORARY RESTRAINING ORDER

Sincerely,

**THE NEIGHBORHOOD ASSOCIATION, INC.  
BOARD OF DIRECTORS**

---

Salvatore M. Cutrona, Sr.      -President

Marc Betesh, Esq.            -Secretary

Enzo Orsini                    -Vice President & Treasurer

**Board Email:**                    [naboardstthomas@gmail.com](mailto:naboardstthomas@gmail.com)



which would be the responsibility of the Owner of CU-1, has not yet been determined by this Court, and so that NA's members would effectively be coerced or compelled by this disputed assessment to make payments they do not owe, upon threat of loss of use of their residences while this case is pending, and the Court therefore concluding that Great Bay has initiated an unlawful and improper campaign to assess the individual members of NA, with years of retroactive dues assessments, purporting to rely upon a dubious interpretation of the governing condominium documents that require owners of residential units to pay such charges for this separate commercial unit, even as Great Bay has present before this Court the undecided claims in its suit seeking a declaration that it is not the owner of the commercial unit in question, despite having title of record thereto in the records of the Office of the Recorder of Deeds. In pursuit of its evasion of the authority of the Court to decide that claim, Great Bay has suddenly issued invoices to the individual members of NA who own separate interests in condominiums at the property, with a demand that they pay these disputed and apparently unlawful claims by November 22, 2021, or face eviction or lockout from their residences. This imminent threat of self-help by the Plaintiff constitutes a sufficient showing of irreparable harm to NA and its members, warranting issuance of this temporary restraining order, to preserve the status quo and protect NA and its owners from the threatened discriminatory and presumptive illegal actions now being taken. These threats are currently outstanding, and despite demand, have not been withdrawn, as evidenced by the affidavit of NA.

Accordingly, the Court finds that Defendant has demonstrated that (1) there is a reasonable probability of eventual success in this litigation and on this present threatened illegal conduct; (2) if injunctive relief is denied, NA and its members will suffer irreparable harm; (3) the harm to Great Bay is not outweighed by the harm to NA and its members if the requested relief is granted;

and (4) the public interest favors injunctive relief in this case.

NOW, THEREFORE, IT IS HEREBY ORDERED that Great Bay, and all persons acting in concert with Great Bay, be and are hereby ordered to rescind the invoices to NA members for dues and common charges for CU-1, and from taking any action to impose a lien related thereto, or from taking any steps to Lock Out or otherwise impair, restrain or obstruct in any way the use by NA's members or their residences, condominiums, or the common areas at the Ritz-Carlton, or other membership rights and amenities, for a period of fourteen (14) days from the date of this order, commencing on the date and hour set forth below, and it is further

ORDERED that this matter shall come on for hearing upon NA's motion for a preliminary injunction to continue the order here entered on November 19, 2021, at 10:00AM, in the Superior Court of the Virgin Islands, to be conducted by Zoom with an invitation to issue by the Clerk of the Court to the parties and their witnesses.

SO ORDERED this 18<sup>th</sup> day of November, 2021, at 5:30 o'clock pm,

  
HONORABLE RENE GUMBS CARTY  
JUDGE OF THE SUPERIOR COURT

ATTEST:

\_\_\_\_\_  
Clerk of the Court

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.,	)	
	)	
Plaintiff,	)	CASE NO. ST-18-CV-768
	)	
v.	)	ACTION FOR DECLARATORY
	)	JUDGMENT, TO CANCEL DEED
THE NEIGHBORHOOD ASSOCIATION, INC.,	)	AND TO QUIET TITLE
	)	
Defendant.	)	
_____	)	

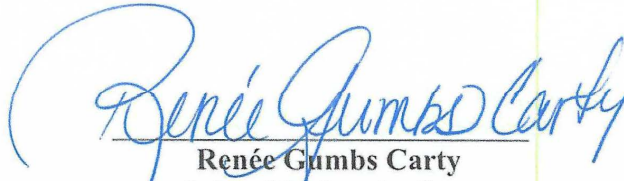
ORDER

AND NOW, it is hereby

**ORDERED** that this matter shall come for a **status conference** on **Tuesday, November 16, 2021, at 10:45 a.m., via Zoom**; and it is further

**ORDERED** that a copy of this Order shall be directed to W. Mark Wilczynski, Esquire and Maria Tankenson Hodge, Esquire.

Dated: November 12, 2021

  
**Renée Gumbs Carty**  
Judge of the Superior Court  
of the Virgin Islands

ATTEST:  
Tamara Charles  
Clerk of the Court

By: \_\_\_\_\_  
Latoya Camacho  
Court Clerk Supervisor \_\_\_ / \_\_\_ / \_\_\_

# **EXHIBIT 3**



Doc# 2006007163  
# Pages 24  
07/18/2006 3:06PM  
Official Records of  
ST THOMAS/ST JOHN  
WILMA O. HART SMITH  
RECORDER OF DEEDS  
Fees \$60.00

183

This instrument prepared by  
and return to:  
Mark S. Lieblich, Esq.  
Marriott Ownership Resorts, Inc.  
6649 Westwood Boulevard  
Orlando, Florida 32821-6090  
(407) 206-6000

**FIFTH AMENDMENT TO  
DECLARATION ESTABLISHING A PLAN FOR CONDOMINIUM  
OWNERSHIP OF PARCEL NOS. 4-2 AND 4-3  
ESTATE NAZARETH, NO. 1 RED HOOK QUARTER,  
ST. THOMAS, U.S. VIRGIN ISLANDS,  
PURSUANT TO CHAPTER 33, TITLE 28 OF  
THE VIRGIN ISLANDS CODE**

THIS FIFTH AMENDMENT TO DECLARATION is made effective the 6th day of June, 2006, by RC HOTELS (VIRGIN ISLANDS), INC., a corporation organized and existing under the laws of the U.S. Virgin Islands, whose principal office is situated at Parcel No. 6 Estate Nazareth, St. Thomas, Virgin Islands, hereinafter referred to as the "Declarant":

WHEREAS, by Declaration Establishing a Plan for Condominium Ownership of Parcel Nos. 4-2 and 4-3 Estate Nazareth, No. 1 Red Hook Quarter, St. Thomas, U.S. Virgin Islands, Pursuant to Chapter 33, Title 28 of the Virgin Islands Code made on May 10, 2002, and recorded in the Office of the Recorder of Deeds for St. Thomas and St. John on May 31, 2002, as Document No. 2002002741, as subsequently expanded and amended (collectively, together with all corrective instruments and other amendments related thereto, the "Declaration"), the Declarant submitted the land described therein to the provisions of Chapter 33, Title 28, Virgin Islands Code, known also as the "Condominium Act of the Virgin Islands", which condominium is known as Great Bay Condominium; and

WHEREAS, Declarant desires to amend the Declaration pursuant to Article 19 thereof in order to submit to the Condominium the land, building and improvements relating to the Phase described herein, containing Building G;

NOW, THEREFORE, pursuant to Article 19 of the Declaration, the Declaration is hereby amended in the following respects only:

1. The Declaration is hereby amended to submit the land described on **Exhibit "A"** attached hereto, together with Building G and related improvements thereon erected, owned by the Declarant in fee simple absolute (hereinafter, separately sometimes referred to as the Phase Six (6) Property, but together with the previously submitted land and improvements, collectively referred to as the "Property"), to the provisions of Chapter 33, Title 28, Virgin Islands Code, known also as

Doc# 2006007163

the "Condominium Act of the Virgin Islands". The Phase Six (6) Property being submitted to the Declaration is hereby made subject to such reciprocal easements, covenants and restrictions as may be necessary to implement and further the purposes and intent of that certain Reciprocal Easement Agreement by and between Marriott Hotel Services, Inc., a Delaware corporation and RC Hotels (Virgin Islands), Inc., a Delaware corporation recorded in the Official Records of St. Thomas/St. John as Document Number 2002002739 on May 31, 2002, as such instrument has been amended from time to time and, in particular, to reserve unto Declarant for the benefit of all property owned by Declarant adjacent to and in the vicinity of the Phase Six (6) Property and to grant for the benefit of the Condominium and all Owners of any part thereof, and to and for the benefit of all successors and assigns of the foregoing parties, nonexclusive, perpetual, reciprocal utility and access easements for the use, maintenance, repair and replacement of existing facilities, utilities and other improvements subject to and in accordance with the terms and conditions of, and in all respects as if originally set forth in, the Reciprocal Easement Agreement, over, under and upon the parcels designated as Easement "B-2" and as Easement "A-5" in **Exhibit "D"** attached hereto.

2. Floor Plans of Building G of Phase Six (6) of the Condominium, certified by Brian Moseley and Associates, are set forth in **Exhibit "B"** attached hereto, including the location and identification numbers for each Residence. Building G will contain twelve (12) Residences and one (1) Commercial Unit, is five (5) stories tall and is constructed of concrete masonry and drywall. The twelve (12) Residences located in Building G shall be designated as "Two Bedroom Suites". The occupancy of Two Bedroom Suites, inclusive of children, shall be limited to six (6) people at a time.

3. The schedule set forth in **Exhibit "C"** attached hereto includes a list of all Residences, including the Residences in Building G of Phase Six (6) of the Condominium, approximate areas, number of bedrooms, percentage of ownership and votes of each Residence. **Exhibit "C"** also describes the approximate area, the percentage of ownership and votes associated with the Commercial Unit created hereby.

4. **Exhibit "B"**, Percentage Ownership Allocation, of the Declaration is hereby replaced by the attached **Exhibit "C"**.

5. All Owners of Residences that are designated as a Two Bedroom Suite shall, in addition to being Members of the Condominium Association, be mandatory members of the Neighborhood Association whose sole purpose is to own and operate Commercial Unit CU-1, which shall be conveyed by Declarant to the Neighborhood Association and utilized for the exclusive benefit of the occupants from time to time of the Two Bedroom Suites, whether or not such occupants are Members of the Neighborhood Association, and as more particularly described in the organizational and governing documents of the Neighborhood Association. As a member of the Neighborhood Association, Owners of Two Bedroom Suites are responsible for all costs and expenses of the ownership and operation of Commercial Unit CU-1, including but not limited to any services that it may elect to provide. The furnishings located in the Commercial Unit, meaning all furniture, appliances, moveable equipment, utensils, carpeting, accessories, and other personal property located therein, were previously utilized in connection

with the operation of the adjacent Ritz-Carlton Hotel.

In addition to the lien in favor of the Members Association against each Residence or Residence Interest, as applicable, for any unpaid assessments and for interest accruing thereon, together with related charges, as set forth in the Declaration, all Owners of Residences that are designated as a Two Bedroom Suite shall, in addition, be subject to a lien in favor of the Neighborhood Association to secure any unpaid assessments, fees or special charges imposed on members of the Neighborhood Association pursuant to the Bylaws of the Neighborhood Association, which shall include, but not be limited to, interest, costs and attorney's fees incurred in the collection of a delinquent payment or enforcement of a lien. The Neighborhood Association lien shall be effective from and after recording a claim of lien in the Public Records of the U.S. Virgin Islands stating the legal description of the Residence (or Residence Interest, as applicable) the name of the Member of record, the amount claimed to be due and the due dates. The lien shall continue in effect until all sums secured by the lien shall have been fully paid or until such time as is otherwise permitted by law. Such claims of lien shall be signed and verified by an officer of the Neighborhood Association, or by an authorized agent of the Neighborhood Association, e.g., officer or designated employee of the manager retained by the Neighborhood Association. Upon full payment, the party making payment shall be entitled to a recordable satisfaction of lien, to be prepared and recorded at such party's expense. All Neighborhood Association liens shall be subordinate to any Members Association lien and any mortgage recorded prior to the date of recording the claim of lien in favor of the Neighborhood Association, and all such liens may be foreclosed by suit brought in the name of the Neighborhood Association in the same manner as a foreclosure of a mortgage on real property, or as otherwise provided by applicable law. The Neighborhood Association may also sue to recover a money judgment for unpaid assessments without thereby waiving any claim of lien.

In the event a Mortgagee holding a first priority mortgage shall obtain title to a Residence Interest as a result of the foreclosure of such mortgage, or in the event such Mortgagee shall obtain title to a Residence Interest as the result of a conveyance in lieu of foreclosure of such mortgage, such Mortgagee shall not be liable, except to the extent required under the laws of the U.S. Virgin Islands, for that share of the Neighborhood Association expenses or assessments chargeable to the Residence Interest, or the member thereof, which became due prior to the acquisition of title by such Mortgagee.

6. In all other respects the Declaration remains unchanged, and all provisions relating to the Property now apply to the Property which by this Amendment has become part of the Condominium.

IN WITNESS WHEREOF, the undersigned, being the Declarant, has caused its seal to be hereunto affixed and these presents to be signed by its officer thereunder duly authorized the day and year first above written.

WITNESSES:

[Signature]  
[Signature]

RC HOTELS (VIRGIN ISLANDS), INC.

By: The Ritz-Carlton Club, St. Thomas, Inc., a U.S. Virgin Islands corporation

By: [Signature]  
Attorney-in-Fact, pursuant to Power of Attorney dated April 29, 2002, and Recorded on May 31, 2002, as Doc. No. 2002002737  
Print Name: JoAnn L. Pierce  
As its: Vice President

TERRITORY OF THE VIRGIN ISLANDS )  
DIVISION OF ST. THOMAS & ST. JOHN ) ss:

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of June, 2006, by JoAnn L. Pierce as Attorney-in-Fact for The Ritz-Carlton Club, St. Thomas, Inc., a U.S. Virgin Islands corporation, on behalf of RC Hotels (Virgin Islands), Inc., a U.S. Virgin Islands corporation.

WITNESS my hand and seal this 6<sup>th</sup> day of June, 2006.

[Signature]  
Notary Public

Fairly Attidore-Smith, Notary Public  
My Commission Exp. September 16, 2009  
NP-095-05  
District of St. Thomas/St. John

Doc# 2006007163

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

Doc# 2006007163



**Brian Moseley  
& Associates, Inc.**  
Land Surveyors & Consultants

DWG. No. 1659-5B

DWG. Date: 04-13-05

Remainder Parcel No. 4  
(Southwestern Portion)  
Estate Nazareth  
No. 2 Red Hook Quarter  
St. Thomas, U.S. Virgin Islands

OLG No. \_\_\_\_\_

**BOUNDARY DESCRIPTION:**

Beginning at a point common to Parcel No. 4-11, R.O.W. Parcel No. 4-4, and Remainder Parcel No. 4 (Southwestern Portion), the line runs

S 27° 26' 38" E a distance of 59.07' along R.O.W. Parcel No. 4-4 to a point, thence

S 25° 55' 01" E a distance of 74.56' along R.O.W. Parcel No. 4-4 to a point, thence

S 24° 24' 00" E a distance of 34.18' along R.O.W. Parcel No. 4-4 to a point, thence

S 72° 17' 55" W a distance of 235.15' along Parcel No. 5-32 to a point, thence

N 18° 38' 00" W a distance of 140.02' along Parcel No. 5-34 to a point, thence

N 70° 24' 09" E a distance of 28.80' along Parcel No. 4-11 to a point, thence

N 81° 11' 30" E a distance of 23.16' along Parcel No. 4-11 to a point, thence

N 70° 13' 28" E a distance of 100.00' along Parcel No. 4-11 to a point, thence

N 50° 05' 47" E a distance of 66.09' along Parcel No. 4-11 to the point of origin.

The bearings are correlated with A9-624-T003.

The area is 0.747 acres.

Brian Moseley and Associates, Inc.

*Brian M. Moseley*  
Brian M. Moseley, PLS #502-LS



Doc# 2006007163



Brian Moseley  
& Associates, Inc.  
Land Surveyors & Consultants

DWG. No. 1659-5B

DWG. Date: 04-13-05

Remainder Parcel No. 4  
(Southeastern Portion)  
Estate Nazareth  
No. 1 Red Hook Quarter  
St. Thomas, U.S. Virgin Islands  
Page 1 of 2

OLG No. \_\_\_\_\_

**BOUNDARY DESCRIPTION:**

Beginning at a point common to R.O.W. Parcel No. 4-4, Parcel No. 4-10, and Remainder Parcel No. 4 (Southeastern Portion), the line runs

N 84° 12' 51" E a distance of 21.52' along Parcel No. 4-10 to a point, thence

N 84° 12' 51" E a distance of 44.53' along Parcel No. 4-10 to a point, thence

S 54° 57' 19" E a distance of 89.35' along Parcel No. 4-10 to a point, thence

N 35° 56' 27" E a distance of 213.21' along Parcel No. 4-10 to a point, thence

N 35° 56' 27" E a distance of 14.44' along Parcel No. 4-10 to a point, thence

N 35° 56' 27" E a distance of 65', more or less, along Parcel No. 4-10 to a point on the Great Bay Shoreline, thence

Meandering in a southeasterly direction along the shoreline of Great Bay a distance of 340', more or less, to a point, thence

S 07° 28' 00" E a distance of 15', more or less, along Parcel No. 3 to a point, thence

S 68° 56' 15" W a distance of 106.25' along Parcel No. 3 to a point, thence

S 68° 56' 15" W a distance of 125.31' along Parcel No. 3 to a point, thence

S 68° 56' 15" W a distance of 111.24' along Parcel No. 3 to a point, thence

S 72° 19' 50" W a distance of 170.98' along Parcel No. 7A to a point, thence

S 72° 19' 50" W a distance of 14.27' along Parcel No. 7A to a point, thence



Brian Moseley  
& Associates, Inc.  
Land Surveyors & Consultants

DWG. No. 1659-5B

DWG. Date: 04-13-05

Remainder Parcel No. 4  
(Southeastern Portion)  
Estate Nazareth  
No. 1 Red Hook Quarter  
St. Thomas, U.S. Virgin Islands  
Page 2 of 2

S 72° 20' 55" W a distance of 5.86' along the Public Road Rte. #332 to a point, thence

N 24° 24' 00" W a distance of 37.95' along R.O.W. Parcel No. 4-4 to a point, thence

N 25° 55' 01" W a distance of 75.69' along R.O.W. Parcel No. 4-4 to a point, thence

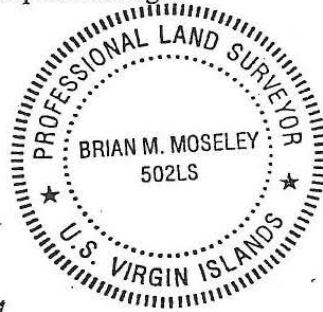
N 27° 26' 38" W a distance of 59.33' along R.O.W. Parcel No. 4-4 to the point of origin.

The bearings are correlated with A9-624-T003.

The area is 1.617 acres.

Brian Moseley and Associates, Inc.

*Brian M. Moseley*  
Brian M. Moseley, PLS #502-LS



Doc# 2006007163



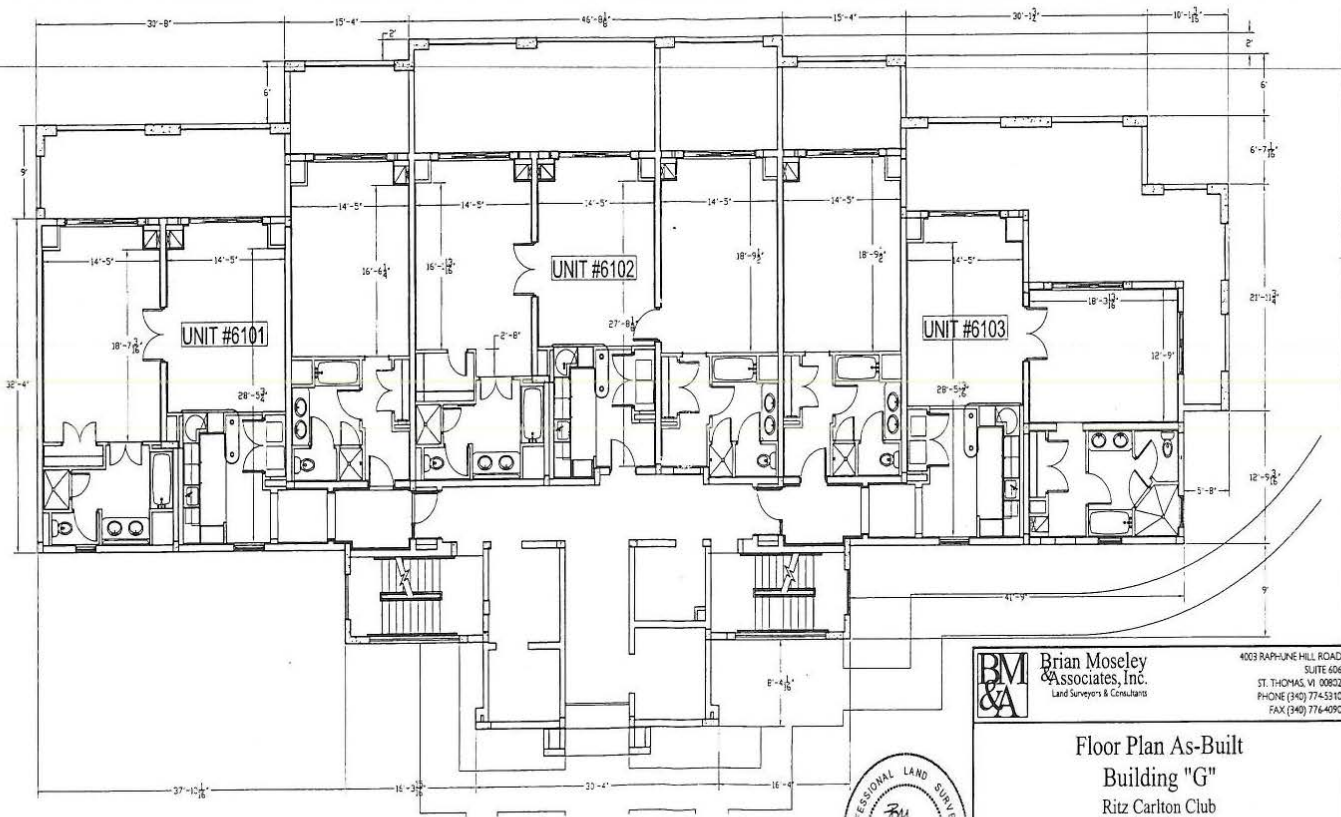
**EXHIBIT "B"**  
**FLOOR PLANS**

Doc# 2006007163

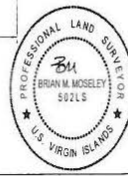
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 Official Records of  
 ST THOMAS/ST JOHN  
 WILMA G. HART SMITH  
 RECORDER OF DEEDS  
 Fees \$68.00

8/7/18/2006 3:06PM  
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 ST THOMAS/ST JOHN  
 WILMA G. HART SMITH  
 RECORDER OF DEEDS

Doc# 2006007163



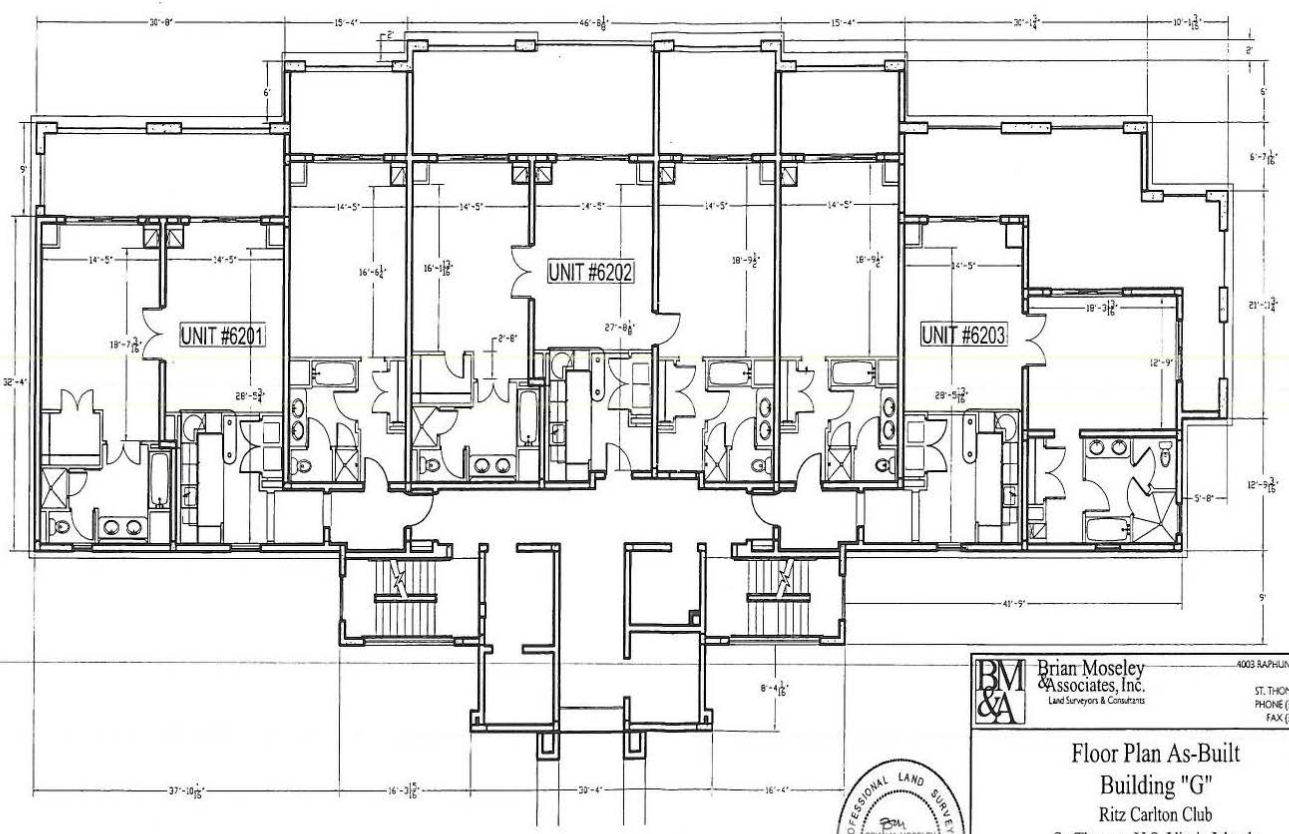
**1st LEVEL FLOOR PLAN (BLDG G)**  
 SCALE: 3/32" = 1'-0"



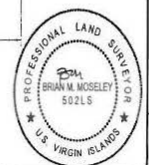
**BMI & A** Brian Moseley Associates, Inc.  
 Land Surveyors & Consultants  
 4003 RAPHAELINE HILL ROAD  
 SUITE 606  
 ST. THOMAS, VI 00802  
 PHONE (340) 774-5310  
 FAX (340) 774-4090

Floor Plan As-Built  
 Building "G"  
 Ritz Carlton Club  
 St. Thomas, U.S. Virgin Islands

SURVEY: MPC/AMM	DATE: 7/13/06	DWG NO: 1659-13-1
CALC: RCW		
DRAWN: RCW		
SCALE: 3/32" = 1'	APPROVED: <i>Brian M. Moseley</i>	SHEET 1 OF 5



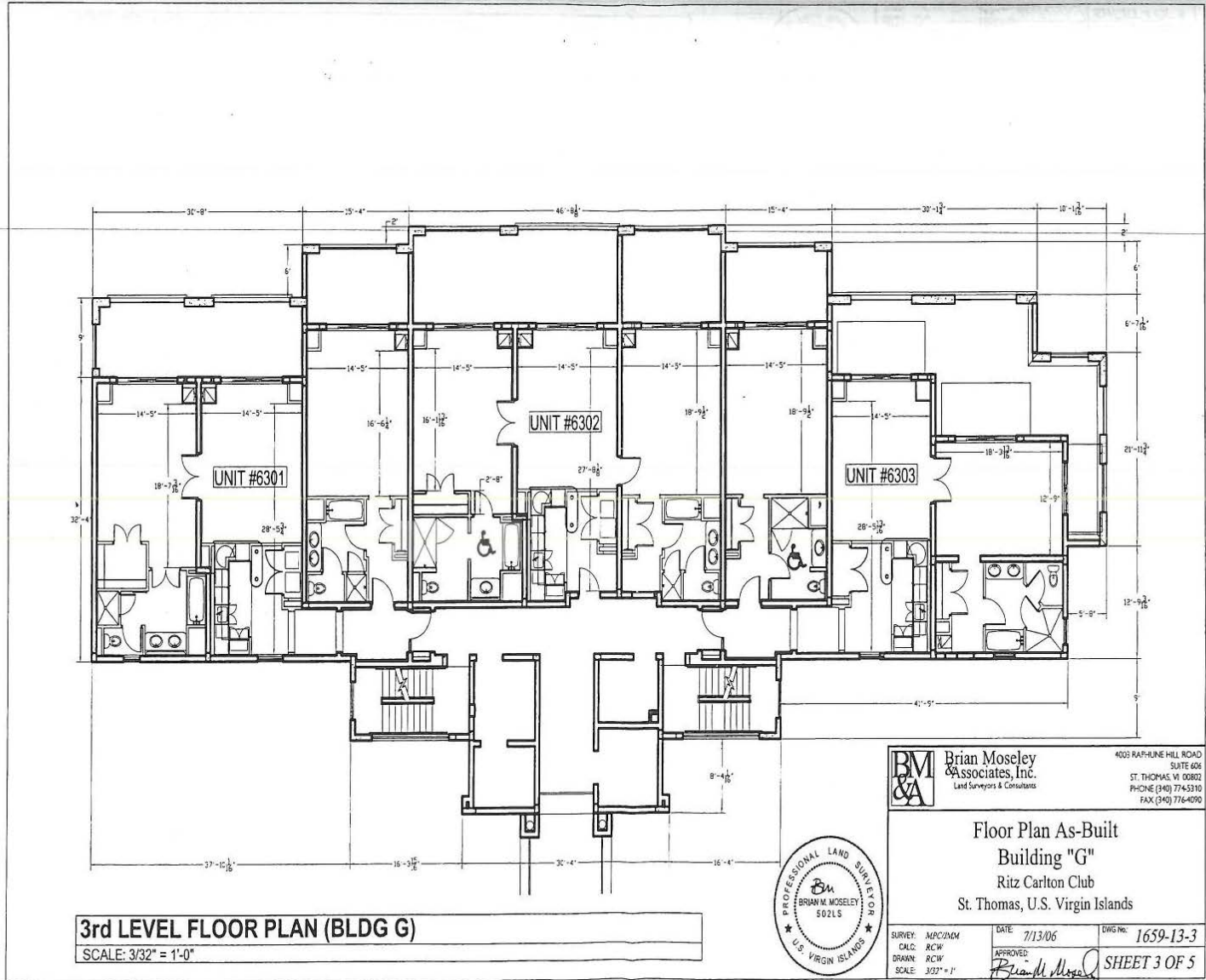
**2nd LEVEL FLOOR PLAN (BLDG G)**  
 SCALE: 3/32" = 1'-0"



**B&M Associates, Inc.**  
 Land Surveyors & Consultants  
 4003 RAPHUNE HILL ROAD  
 SUITE 606  
 ST. THOMAS, VI 00902  
 PHONE (340) 774-5310  
 FAX (340) 774-4290

**Floor Plan As-Built**  
**Building "G"**  
 Ritz Carlton Club  
 St. Thomas, U.S. Virgin Islands

SURVEY: MPC/MM	DATE: 7/13/06	DWG NO: 1659-13-2
CALC: RCW	APPROVED: <i>Brian Moseley</i>	SHEET 2 OF 5
DRAWN: RCW		
SCALE: 3/32" = 1'		



**3rd LEVEL FLOOR PLAN (BLDG G)**  
SCALE: 3/32" = 1'-0"

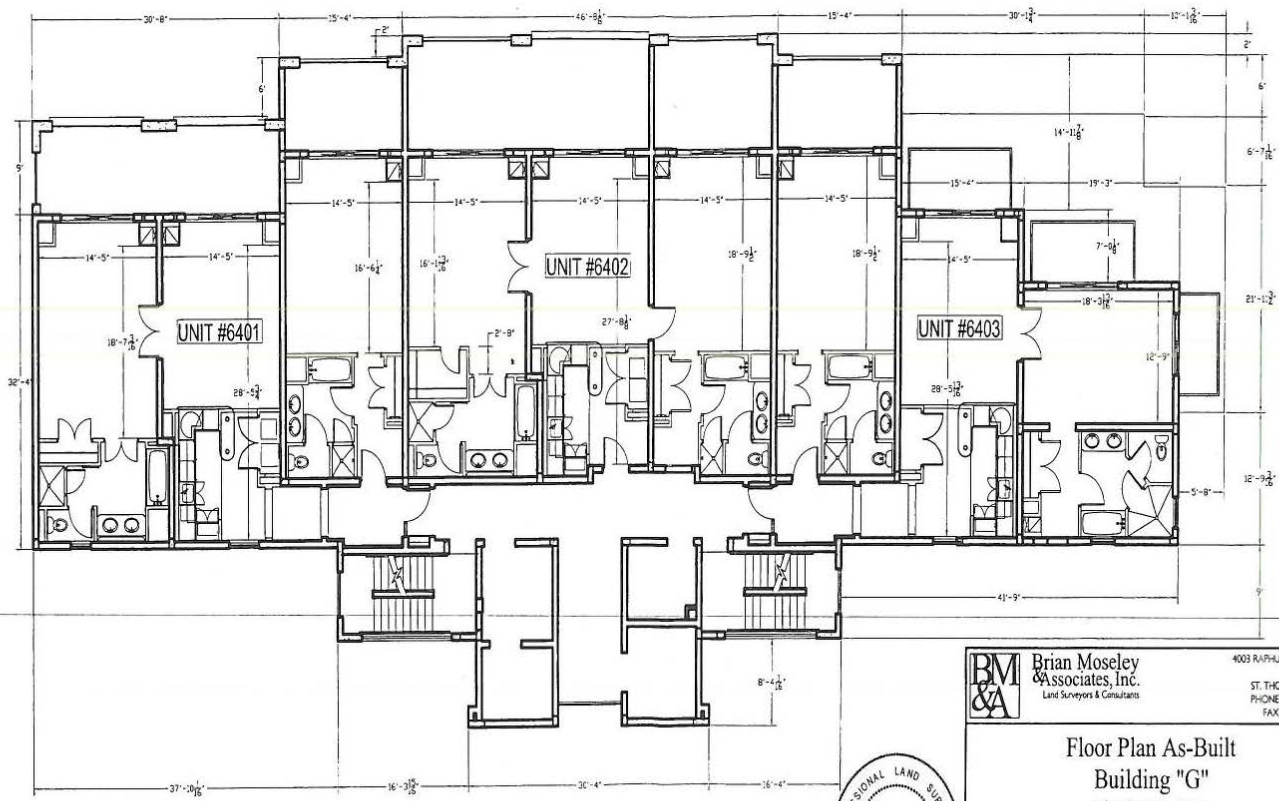
**BM & A** Brian Moseley & Associates, Inc.  
Land Surveyors & Consultants  
4009 RAFFINE HILL ROAD  
SUITE 606  
ST. THOMAS, VI. 00802  
PHONE (340) 774-5310  
FAX (340) 774-4090

**Floor Plan As-Built**  
**Building "G"**  
Ritz Carlton Club  
St. Thomas, U.S. Virgin Islands




SURVEY: MPC/DM	DATE: 7/13/06	DWG No: 1659-13-3
CALC: RCW	APPROVED: <i>Brian Moseley</i>	SHEET 3 OF 5
DRAWN: RCW	SCALE: 3/32" = 1'	

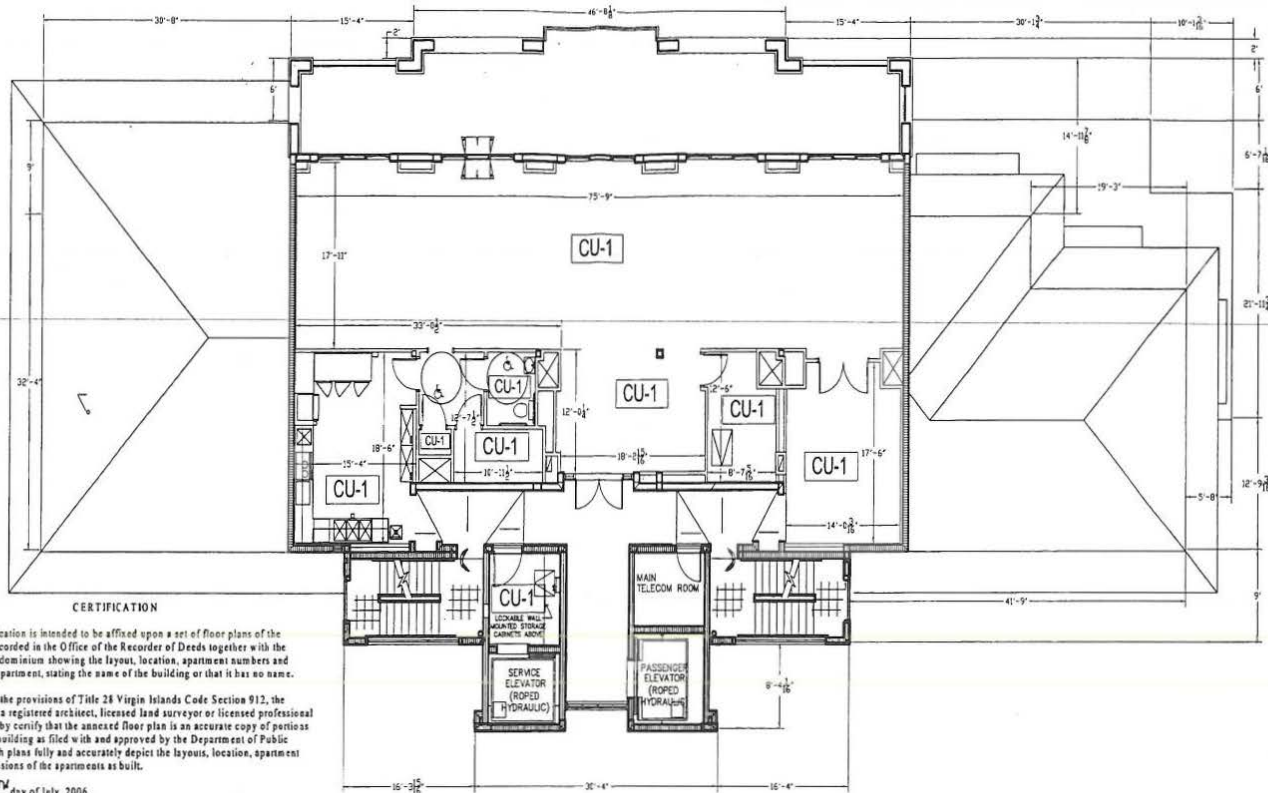
197



**4th LEVEL FLOOR PLAN (BLDG G)**  
 SCALE: 3/32" = 1'-0"



 <b>Brian Moseley &amp; Associates, Inc.</b> Land Surveyors & Consultants	4003 RAIPUNE HILL ROAD SUITE 604 ST. THOMAS, VI 00802 PHONE (340) 774-5310 FAX (340) 774-4090	
	<b>Floor Plan As-Built</b> <b>Building "G"</b> Ritz Carlton Club St. Thomas, U.S. Virgin Islands	
SURVEY: MPCJMM CALC: ACW DRAWN: ACW SCALE: 3/32" = 1'-0"	DATE: 7/13/06 APPROVED: <i>Brian M. Moseley</i>	DWG. NO.: 1659-13-4 SHEET 4 OF 5



**CERTIFICATION**

This Certification is intended to be affixed upon a set of floor plans of the building(s) to be recorded in the Office of the Recorder of Deeds together with the Declaration of Condominium showing the layout, location, apartment numbers and dimensions of the apartment, stating the name of the building or that it has no name.

Pursuant to the provisions of Title 28 Virgin Islands Code Section 912, the undersigned, being a registered architect, licensed land surveyor or licensed professional engineer, does hereby certify that the annexed floor plan is an accurate copy of portions of the plans of the building as filed with and approved by the Department of Public Works and that such plans fully and accurately depict the layout, location, apartment numbers and dimensions of the apartments as built.

Certified this 13<sup>th</sup> day of July, 2006.

BRIAN MOSELEY & ASSOCIATES, INC.

*Brian M. Moseley*  
 Brian M. Moseley, KLS #592

TERRITORY OF THE VIRGIN ISLANDS )  
 ) SS:  
 DISTRICT OF ST. THOMAS & ST. JOHN )

The foregoing was acknowledged before me this 13<sup>th</sup> day of July, 2006 by Brian M. Moseley, ~~DENISE FRACUELA~~ registered land surveyor.

NP-022-03  
 COMM. EXPIRES 12-15-06

*[Signature]*  
 Notary Public



**5th LEVEL FLOOR PLAN (BLDG G)**  
 SCALE: 3/32" = 1'-0"

	<b>Brian Moseley &amp; Associates, Inc.</b> Land Surveyors & Consultants	4003 RAPHAEL HILL ROAD SUITE 606 ST. THOMAS, VI 02062 PHONE (340) 774-5310 FAX (340) 774-4090
	<b>Floor Plan As-Built</b> <b>Building "G"</b> <b>Ritz Carlton Club</b> <b>St. Thomas, U.S. Virgin Islands</b>	
SURVEY: MRC/MAM CALC: RCW DRAWN: RCW SCALE: 3/32" = 1'	DATE: 7/13/06 APPROVED: <i>[Signature]</i>	DWG No.: 1659-13-5 <b>SHEET 5 OF 5</b>

EXHIBIT "C"  
PERCENTAGE OWNERSHIP ALLOCATION

Doc# 2006007163

THE RITZ-CARLTON CLUB, ST. THOMAS  
 GARDENIA, HELICONIA, IRIS, JASMINE, KAVA & LILY BUILDINGS  
 CONDOMINIUM DECLARATION - EXHIBIT C

UNIT NO.	UNIT TYPE	LOCATION	AREA	VALUE	% INTEREST	VOTES
1101	2br	End	1626	\$ 1,341,450.00	0.894276%	0.94793
1102	2br	Center	1626	\$ 1,341,450.00	0.894276%	0.94793
1103	2br	Center	1626	\$ 1,341,450.00	0.894276%	0.94793
1201	2br	End	1626	\$ 1,341,450.00	0.894276%	0.94793
1202	2br	Center	1626	\$ 1,341,450.00	0.894276%	0.94793
1203	3br	Center	1912	\$ 1,577,400.00	1.051572%	1.11467
1204	2br	End	1626	\$ 1,341,450.00	0.894276%	0.94793
1301	2br	End	1626	\$ 1,341,450.00	0.894276%	0.94793
1302	2br	Center	1626	\$ 1,341,450.00	0.894276%	0.94793
1303	3br	Center	1912	\$ 1,577,400.00	1.051572%	1.11467
1304	2br	End	1626	\$ 1,341,450.00	0.894276%	0.94793
1401	2br	End	1626	\$ 1,341,450.00	0.894276%	0.94793
1402	2br	Center	1626	\$ 1,341,450.00	0.894276%	0.94793
1403	3br	Center	1912	\$ 1,577,400.00	1.051572%	1.11467
1404	2br	End	1626	\$ 1,341,450.00	0.894276%	0.94793
1501	2br	End	1626	\$ 1,341,450.00	0.894276%	0.94793
1502	2br	Center	1626	\$ 1,341,450.00	0.894276%	0.94793
1503	3br	Center	1912	\$ 1,577,400.00	1.051572%	1.11467
1504	2br	End	1626	\$ 1,341,450.00	0.894276%	0.94793
1601	2br	End	1626	\$ 1,341,450.00	0.894276%	0.94793
1602	2br	Center	1626	\$ 1,341,450.00	0.894276%	0.94793
1603	3br	Center	1912	\$ 1,577,400.00	1.051572%	1.11467
1604	2br	End	1626	\$ 1,341,450.00	0.894276%	0.94793
2101	2br	End	1626	\$ 1,341,450.00	0.894276%	0.94793
2102	3br	Center	1912	\$ 1,577,400.00	1.051572%	1.11467
2103	2br	Center	1626	\$ 1,341,450.00	0.894276%	0.94793
2201	2br	End	1626	\$ 1,341,450.00	0.894276%	0.94793
2202	3br	Center	1912	\$ 1,577,400.00	1.051572%	1.11467
2203	2br	Center	1626	\$ 1,341,450.00	0.894276%	0.94793
2204	2br	End	1626	\$ 1,341,450.00	0.894276%	0.94793
2301	2br	End	1626	\$ 1,341,450.00	0.894276%	0.94793
2302	3br	Center	1912	\$ 1,577,400.00	1.051572%	1.11467
2303	2br	Center	1626	\$ 1,341,450.00	0.894276%	0.94793
2304	2br	End	1626	\$ 1,341,450.00	0.894276%	0.94793
2401	2br	End	1626	\$ 1,341,450.00	0.894276%	0.94793
2402	3br	Center	1912	\$ 1,577,400.00	1.051572%	1.11467
2403	2br	Center	1626	\$ 1,341,450.00	0.894276%	0.94793
2404	2br	End	1626	\$ 1,341,450.00	0.894276%	0.94793
2501	2br	End	1626	\$ 1,341,450.00	0.894276%	0.94793
2502	3br	Center	1912	\$ 1,577,400.00	1.051572%	1.11467
2503	2br	Center	1626	\$ 1,341,450.00	0.894276%	0.94793
2504	2br	End	1626	\$ 1,341,450.00	0.894276%	0.94793
3101	2br	End	1626	\$ 1,341,450.00	0.894276%	0.94793
3102	3br	Center	1912	\$ 1,577,400.00	1.051572%	1.11467
3103	3br	Center	1912	\$ 1,577,400.00	1.051572%	1.11467
3104	2br	End	1626	\$ 1,341,450.00	0.894276%	0.94793
3201	2br	End	1626	\$ 1,341,450.00	0.894276%	0.94793
3202	3br	Center	1912	\$ 1,577,400.00	1.051572%	1.11467
3203	3br	Center	1912	\$ 1,577,400.00	1.051572%	1.11467
3204	2br	End	1626	\$ 1,341,450.00	0.894276%	0.94793
3301	2br	End	1626	\$ 1,341,450.00	0.894276%	0.94793
3302	3br	Center	1912	\$ 1,577,400.00	1.051572%	1.11467
3303	3br	Center	1912	\$ 1,577,400.00	1.051572%	1.11467
3304	2br	End	1626	\$ 1,341,450.00	0.894276%	0.94793
3401	2br	End	1626	\$ 1,341,450.00	0.894276%	0.94793
3402	3br	Center	1912	\$ 1,577,400.00	1.051572%	1.11467
3403	3br	Center	1912	\$ 1,577,400.00	1.051572%	1.11467
3404	2br	End	1626	\$ 1,341,450.00	0.894276%	0.94793
3501	2br	End	1626	\$ 1,341,450.00	0.894276%	0.94793
3502	3br	Center	1912	\$ 1,577,400.00	1.051572%	1.11467
3503	3br	Center	1912	\$ 1,577,400.00	1.051572%	1.11467



THE RITZ-CARLTON CLUB, ST. THOMAS  
 GARDENIA, HELICONIA, IRIS, JASMINE, KAVA & LILY BUILDINGS  
 CONDOMINIUM DECLARATION - EXHIBIT C

UNIT NO.	UNIT TYPE	LOCATION	AREA	VALUE	% INTEREST	VOTES
4101	3br	End	1912	\$ 1,577,400.00	1.051572%	1.11467
4102	3br	Center	1912	\$ 1,577,400.00	1.051572%	1.11467
4103	3br	Center	1912	\$ 1,577,400.00	1.051572%	1.11467
4104	3br	Center	1912	\$ 1,577,400.00	1.051572%	1.11467
4105	2br	End	1626	\$ 1,341,450.00	0.894276%	0.94793
4201	3br	End	1912	\$ 1,577,400.00	1.051572%	1.11467
4202	3br	Center	1912	\$ 1,577,400.00	1.051572%	1.11467
4203	3br	Center	1912	\$ 1,577,400.00	1.051572%	1.11467
4204	3br	Center	1912	\$ 1,577,400.00	1.051572%	1.11467
4205	2br	End	1626	\$ 1,341,450.00	0.894276%	0.94793
4301	3br	End	1912	\$ 1,577,400.00	1.051572%	1.11467
4302	3br	Center	1912	\$ 1,577,400.00	1.051572%	1.11467
4303	3br	Center	1912	\$ 1,577,400.00	1.051572%	1.11467
4304	3br	Center	1912	\$ 1,577,400.00	1.051572%	1.11467
4305	2br	End	1626	\$ 1,341,450.00	0.894276%	0.94793
4401	3br	End	1912	\$ 1,577,400.00	1.051572%	1.11467
4402	3br	Center	1912	\$ 1,577,400.00	1.051572%	1.11467
4403	3br	Center	1912	\$ 1,577,400.00	1.051572%	1.11467
4404	3br	Center	1912	\$ 1,577,400.00	1.051572%	1.11467
4405	2br	End	1626	\$ 1,341,450.00	0.894276%	0.94793
5101	2br - Suites	End	1552	\$ 1,280,400.00	0.853577%	0.90479
5102	2br - Suites	Center	1552	\$ 1,280,400.00	0.853577%	0.90479
5103	2br - Suites	End	1552	\$ 1,280,400.00	0.853577%	0.90479
5201	2br - Suites	End	1552	\$ 1,280,400.00	0.853577%	0.90479
5202	2br - Suites	Center	1552	\$ 1,280,400.00	0.853577%	0.90479
5203	2br - Suites	End	1552	\$ 1,280,400.00	0.853577%	0.90479
5301	2br - Suites	End	1552	\$ 1,280,400.00	0.853577%	0.90479
5302	2br - Suites	Center	1552	\$ 1,280,400.00	0.853577%	0.90479
5303	2br - Suites	End	1552	\$ 1,280,400.00	0.853577%	0.90479
5401	2br - Suites	End	1552	\$ 1,280,400.00	0.853577%	0.90479
5402	2br - Suites	Center	1552	\$ 1,280,400.00	0.853577%	0.90479
5403	2br - Suites	End	1552	\$ 1,280,400.00	0.853577%	0.90479
6101	2br - Suites	End	1552	\$ 1,280,400.00	0.853577%	0.90479
6102	2br - Suites	Center	1552	\$ 1,280,400.00	0.853577%	0.90479
6103	2br - Suites	End	1552	\$ 1,280,400.00	0.853577%	0.90479
6201	2br - Suites	End	1552	\$ 1,280,400.00	0.853577%	0.90479
6202	2br - Suites	Center	1552	\$ 1,280,400.00	0.853577%	0.90479
6203	2br - Suites	End	1552	\$ 1,280,400.00	0.853577%	0.90479
6301	2br - Suites	End	1552	\$ 1,280,400.00	0.853577%	0.90479
6302	2br - Suites	Center	1552	\$ 1,280,400.00	0.853577%	0.90479
6303	2br - Suites	End	1552	\$ 1,280,400.00	0.853577%	0.90479
6401	2br - Suites	End	1552	\$ 1,280,400.00	0.853577%	0.90479
6402	2br - Suites	Center	1552	\$ 1,280,400.00	0.853577%	0.90479
6403	2br - Suites	End	1552	\$ 1,280,400.00	0.853577%	0.90479
CU-1	Commercial Unit		2573	\$ 2,122,725.00	1.415112%	1.50002
24	Unit 2-Bedroom Suites		37,248	30,729,600	20.485857%	21.72
45	Unit 2-Bedroom Allocation		73,170	60,365,250	40.242434%	42.66
36	Unit 3 Bedroom Allocation		68,832	56,786,400	37.856597%	40.13
1	Commercial Unit		2,573	2,122,725	1.415112%	1.50
106	Unit Allocation		181,823	\$ 150,003,975	100.000000%	106.00

**EXHIBIT "D"**  
**EASEMENT "B-2"**  
**AND "A-5"**

Doc# 2006007163



Brian Moseley  
& Associates, Inc.  
Land Surveyors & Consultants

DWG. No. 1659-5B

DWG. Date: 04-13-05

Easement "B-2" over  
Remainder Parcel No. 4  
(Southeastern Portion)  
Estate Nazareth  
No. 1 Red Hook Quarter  
St. Thomas, U.S. Virgin Islands  
Page 1 of 2

OLG No. \_\_\_\_\_

**BOUNDARY DESCRIPTION:**

Beginning at a point common to Parcel No. 4-10, Remainder Parcel No. 4 (Southeastern Portion), and Easement "B-2", the line runs

N 35° 56' 27" E a distance of 14.44' along Parcel No. 4-10 to a point, thence

Southeasterly an arc distance of 15.77' on a curve to the left having a radius of 218.00' over Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

S 43° 33' 37" E a distance of 56.96' over Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

S 35° 43' 40" E a distance of 67.88' over Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

Southeasterly an arc distance of 79.13' on a curve to the left having a radius of 100.00' over Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

S 81° 03' 56" E a distance of 33.89' over Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

Easterly an arc distance of 18.32' on a curve to the left having a radius of 35.00' over Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

S 68° 56' 15" W a distance of 125.31' along Parcel No. 3 to a point, thence

Northerly an arc distance of 44.31' on a curve to the left having a radius of 110.00' over Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

Northerly an arc distance of 37.61' on a curve to the left having a radius of 75.00' over Remainder Parcel No. 4 (Southeastern Portion) to a point, thence



Brian Moseley  
& Associates, Inc.  
Land Surveyors & Consultants

DWG. No. 1659-5B

DWG. Date: 04-13-05

Easement "B-2" over  
Remainder Parcel No. 4  
(Southeastern Portion)  
Estate Nazareth  
No. 1 Red Hook Quarter  
St. Thomas, U.S. Virgin Islands  
Page 2 of 2

N 35° 43' 40" W a distance of 69.48' over Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

N 43° 33' 37" W a distance of 56.00' over Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

Northwesterly an arc distance of 13.13' on a curve to the right having a radius of 232.00' over Remainder Parcel No. 4 (Southeastern Portion) to the point of origin.

The bearings are correlated with A9-624-T003:

The area is 5,683 Square Feet, more or less.

Brian Moseley and Associates, Inc.

*Brian M. Moseley*  
Brian M. Moseley, PLS #502-LS



Doc# 2006007163



Brian Moseley  
& Associates, Inc.  
Land Surveyors & Consultants

DWG. No. 1659-5B

DWG. Date: 04-13-05

Utility Easement "A-5" over  
Remainder Parcel No. 4  
(Southeastern Portion)  
Estate Nazareth  
No. 1 Red Hook Quarter  
St. Thomas, U.S. Virgin Islands

OLG No. \_\_\_\_\_

**BOUNDARY DESCRIPTION:**

Beginning at a point common to R.O.W. Parcel No. 4-4, Parcel No. 4-10; Remainder Parcel No. 4 (Southeastern Portion), and Utility Easement "A-5", the line runs

N 84° 12' 51" E a distance of 21.52' along Parcel No. 4-10 to a point, thence

S 27° 26' 38" E a distance of 51.65' over Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

S 25° 55' 01" E a distance of 76.22' over Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

S 24° 24' 00" E a distance of 40.57' over Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

S 72° 19' 50" W a distance of 14.27' along Parcel No. 7A to a point, thence

S 72° 20' 55" W a distance of 5.86' along the Public Route #332 to a point, thence

N 24° 24' 00" W a distance of 37.95' along R.O.W. Parcel No. 4-4 to a point, thence

N 25° 55' 01" W a distance of 75.69' along R.O.W. Parcel No. 4-4 to a point, thence

N 27° 26' 38" W a distance of 59.33' along R.O.W. Parcel No. 4-4 to the point of origin.

The bearings are correlated with A9-624-T003.

The area is 3,414 Square Feet, more or less.

Brian Moseley and Associates, Inc.

*Brian M. Moseley*  
Brian M. Moseley, PLS #502-LS



# **EXHIBIT 4**

Doc# 2006007164

# Pages 2  
07/18/2006 3:08PM  
Official Records of  
ST THOMAS/ST JOHN  
WILMA O. HART SMITH  
RECORDER OF DEEDS  
Fees \$36.00

This instrument prepared by  
and return to:  
Mark S. Lieblich, Esq.  
Marriott Ownership Resorts, Inc.  
6649 Westwood Boulevard  
Orlando, Florida 32821-6090  
(407) 206-6000

**FOURTH AMENDMENT TO  
SUPPLEMENTARY DECLARATION OF CONDOMINIUM  
FOR THE CLUB AT GREAT BAY CONDOMINIUM ST. THOMAS,  
U.S. VIRGIN ISLANDS**

THIS FOURTH AMENDMENT TO SUPPLEMENTARY DECLARATION FOR THE CLUB AT GREAT BAY CONDOMINIUM (the "Fourth Amendment to Supplementary Declaration") is made effective the 14th day of June, 2006, by RC HOTELS (VIRGIN ISLANDS), INC., a corporation organized and existing under the laws of the U.S. Virgin Islands, whose principal office is situated at Parcel No. 6 Estate Nazareth, St. Thomas, Virgin Islands, hereinafter referred to as the "Declarant":

WHEREAS, by Declaration Establishing a Plan for Condominium Ownership of Parcel Nos. 4-2 and 4-3 Estate Nazareth, No. 1 Red Hook Quarter, St. Thomas, U.S. Virgin Islands, Pursuant to Chapter 33, Title 28 of the Virgin Islands Code made on May 10, 2002, and recorded in the Office of the Recorder of Deeds for St. Thomas and St. John on May 31, 2002, as Document No. 2002002741, as subsequently expanded and amended (collectively, together with all corrective instruments and other amendments related thereto, the "Declaration"), the Declarant submitted the land described therein to the provisions of Chapter 33, Title 28, Virgin Islands Code, known also as the "Condominium Act of the Virgin Islands", which condominium is known as Great Bay Condominium; and

WHEREAS, the Declaration was supplemented by that certain Supplementary Declaration of Condominium for The Club at Great Bay Condominium (the "Club Declaration"), St. Thomas, U.S. Virgin Islands made by the Declarant on May 10, 2002, and recorded in the Office of the Recorder of Deeds for St. Thomas and St. John on May 31, 2002, as Document No. 2002002742, as subsequently expanded and amended (collectively, together with all corrective instruments and other amendments related thereto, the "Supplementary Declaration") and which Supplementary Declaration created the Residence Interests in the Condominium; and

WHEREAS, Declarant, by the Fifth Amendment recorded simultaneously herewith, has amended the Declaration pursuant to Article 19 thereof in order to submit to the Condominium the land, building and improvements relating to the Phase described therein as containing Building G;

NOW, THEREFORE, pursuant to Article XVII thereof, the Supplementary Declaration is hereby amended in the following respects only:

1. The property that is hereby submitted to the condominium form of ownership under this Fourth Amendment to Supplementary Declaration of Great Bay Condominium for the Club at Great Bay Condominium (the "Fourth Amendment to Supplementary Declaration"), consists of certain Residences in the Condominium which were made subject to the Declaration pursuant to the Fifth Amendment to Condominium Declaration, and are hereby becoming subject to the Club Declaration, including becoming subject to certain time parameters pursuant to Article V of the Club Declaration; the Residence Interests are more particularly described in **Exhibit "A"** attached hereto and by this reference made a part hereof, together with the covenants, conditions and restrictions set forth in the Declaration. No other property is being submitted as Residence Interests at this time.

2. Annexed hereto and made a part hereof as **Exhibit "A"** is a list of all such Residence Interests in Building G which will constitute the sixth (6<sup>th</sup>) phase of the Residence Interests and Common Elements subject to the Club Declaration as amended by this Fourth Amendment to Supplementary Declaration (collectively with those contained in Buildings A, B, C, D, and H referred to hereinafter as the "Club"), their location, identification numbers for each Residence Interest, and approximate areas or number of rooms in each Residence (all as shown on the floor plans attached as Exhibit "B" to the Fifth Amendment to Condominium Declaration).

3. The percentage of ownership is hereby modified with the submission of this Phase Six (6) Property and Exhibit "A" previously attached to and recorded with the Club Declaration is hereby replaced by the attached **Exhibit "A"**.

4. Section 5.6, Legal Description of Residence Interest, is hereby modified to also include the following:

Residence Interests in each of the Building G Residences will be described by reference to one of two (2) Calendars. If the legal description for the Residence Interest is in the format previously set forth in the Club Declaration, then reference is made to the Calendar entitled Building G Rotating Week Calendar. If the legal description for the Residence Interest is in the format set forth below, then reference is made to the Calendar entitled Building G Fixed Week Calendar.

The legal description for a Residence Interest in Building G may be in the following format, which will indicate that reference is made to the Calendar entitled Building G Fixed Week Calendar:

Residence Interest: "X weeks Y" (where X is the Residence number and Y identifies the three (3) weeks of Reserved Allocation ) consisting of said Condominium Unit in The Club at Great Bay Condominium, as defined and described in the Club Declaration of Condominium thereof, filed for record in the Recorder's Office for the District of St. Thomas and St. John, Virgin Islands of the United States as Document No. 2002002742, as subsequently



expanded and amended, together with the exclusive right to possession and occupancy of the specific Residence Interest owned (e.g., two or three bedroom type) during the Reserved Allocation subject to reservation by the Member pursuant to the Reservation Procedures and together with a minimum of twenty-one days of use in accordance with the Residence Documents.

Any legal description substantially in the form provided above or which is otherwise sufficient to identify the Residence Interest shall be good and sufficient for all purposes to sell, convey, transfer and encumber or otherwise affect a Residence Interest including an undivided ownership interest in all Common Elements, Limited Common Elements and easements and appurtenances thereto.

5. The twelve (12) Residences which are the subject of this amendment are Two Bedroom Suites and, as such, all Owners of Residence Interests therein shall in addition to being Members of the Condominium Association, be mandatory members of the Neighborhood Association, whose contemplated sole purpose shall be to own and operate Commercial Unit CU-1, and which may provide certain services for the exclusive benefit of the occupants from time to time of the Two Bedroom Suites, whether or not such occupants are Members of the Neighborhood Association. More particularly, and in accordance with the separate organizational and governing documents of the Neighborhood Association, its members shall control the Neighborhood Association and be responsible for all costs and expenses related to the ownership and operation of the Commercial Unit CU-1, including but not limited to any services that it may elect to provide.

In addition to the lien in favor of the Members Association against each Residence or Residence Interest, as applicable, for any unpaid assessments and for interest accruing thereon, together with related charges, as set forth in the Declaration, all Owners of Residences that are designated as a Two Bedroom Suite shall, in addition, be subject to a lien in favor of the Neighborhood Association to secure any unpaid assessments, fees or special charges imposed on members of the Neighborhood Association pursuant to the Bylaws of the Neighborhood Association, which shall include, but not be limited to, interest, costs and attorney's fees incurred in the collection of a delinquent payment or enforcement of a lien. The Neighborhood Association lien shall be effective from and after recording a claim of lien in the Public Records of the U.S. Virgin Islands stating the legal description of the Residence (or Residence Interest, as applicable) the name of the Member of record, the amount claimed to be due and the due dates. The lien shall continue in effect until all sums secured by the lien shall have been fully paid or until such time as is otherwise permitted by law. Such claims of lien shall be signed and verified by an officer of the Neighborhood Association, or by an authorized agent of the Neighborhood Association, e.g., officer or designated employee of the manager retained by the Neighborhood Association. Upon full payment, the party making payment shall be entitled to a recordable satisfaction of lien, to be prepared and recorded at such party's expense. All Neighborhood Association liens shall be subordinate to any Members Association lien and any mortgage recorded prior to the date of recording the claim of lien in favor of the Neighborhood Association, and all such liens may be foreclosed by suit brought in the name of the

Neighborhood Association in the same manner as a foreclosure of a mortgage on real property, or as otherwise provided by applicable law. The Neighborhood Association may also sue to recover a money judgment for unpaid assessments without thereby waiving any claim of lien.

In the event a Mortgagee holding a first priority mortgage shall obtain title to a Residence Interest as a result of the foreclosure of such mortgage, or in the event such Mortgagee shall obtain title to a Residence Interest as the result of a conveyance in lieu of foreclosure of such mortgage, such Mortgagee shall not be liable, except to the extent required under the laws of the U.S. Virgin Islands, for that share of the Neighborhood Association expenses or assessments chargeable to the Residence Interest, or the member thereof, which became due prior to the acquisition of title by such Mortgagee.

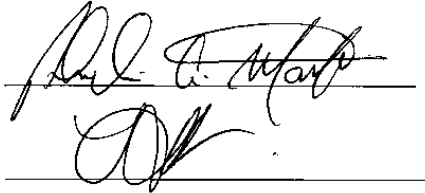
6. Residence Interest Furnishings of all Two Bedroom Suites, meaning all furniture, appliances, moveable equipment, utensils, carpeting, accessories, and other personal property located within a Two Bedroom Suite Residence Interest, are owned by the Members Association and administered by the Club Manager for the benefit of the Members. A portion of the Residence Interest Furnishings in the Two Bedroom Suites was previously utilized in connection with the operation of the adjacent Ritz-Carlton Hotel. In order to compensate for any reduction in the remaining useful life of such furnishings, Declarant has prefunded a portion of the reserves for the Residence Interest Furnishings that are located in the Two Bedroom Suites.

7. In all other respects the Club Declaration, remains unchanged, and all provisions relating to the Club therein now applies to the current Club Property which is part of the Supplementary Declaration of Condominium that includes the Phase Six (6) Property.

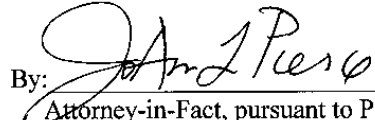
IN WITNESS WHEREOF, the undersigned being the Declarant herein, has caused its seal to be hereunto affixed and these presents to be signed by its officer thereunder duly authorized the day and year first above written.

RC HOTELS (VIRGIN ISLANDS), INC.

WITNESSES:

  
\_\_\_\_\_

By: The Ritz-Carlton Club, St. Thomas, Inc., a U.S. Virgin Islands corporation

By:   
Attorney-in-Fact, pursuant to Power of Attorney dated April 29, 2002, and Recorded on May 31, 2002, as Doc. No. 2002002737  
Print Name: JoAnn L. Pierce  
As its: Vice President

TERRITORY OF THE VIRGIN ISLANDS )  
DIVISION OF ST. THOMAS & ST. JOHN ) ss:

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of June, 2006, by JoAnn L. Pierce as Attorney-in-Fact for The Ritz-Carlton Club, St. Thomas, Inc., a U.S. Virgin Islands corporation, on behalf of RC Hotels (Virgin Islands), Inc., a U.S. Virgin Islands corporation.

WITNESS my hand and seal this 17<sup>th</sup> day of June, 2006.

  
\_\_\_\_\_  
Notary Public

Fairly Attidore-Smith, Notary Public  
My Commission Exp. September 16, 2009  
NP-095-05  
District of St. Thomas/St. John

WITNESSES:

"Organizer"

[Signature]  
Print Name: Fairly Attidore-Smith

THE RITZ-CARLTON CLUB, ST. THOMAS,  
Inc., a U.S. Virgin Islands corporation

[Signature]  
Print Name: Phyllis A. Monsanto

By: [Signature]  
Print Name: John L. Pierce  
As its: Vice President

TERRITORY OF THE VIRGIN ISLANDS )  
DIVISION OF ST. THOMAS & ST. JOHN ) ss:

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of June, 2006, by John L. Pierce, as \_\_\_\_\_ of The Ritz-Carlton Club, St. Thomas, Inc., a U.S. Virgin Islands corporation, on behalf of said corporation.

WITNESS my hand and seal this 6<sup>th</sup> day of June, 2006.

[Signature]  
Notary Public

Fairly Attidore-Smith, Notary Public  
My Commission Exp. September 16, 2009  
NP-095-05  
District of St. Thomas/St. John

**EXHIBIT "A"**  
**PERCENTAGE OWNERSHIP ALLOCATION**

Doc# 2006007164



**THE RITZ-CARLTON CLUB, ST. THOMAS  
GARDENIA, HELICONIA, IRIS, JASMINE, KAVA & LILY BUILDINGS  
SUPPLEMENTARY DECLARATION - EXHIBIT A**

UNIT NO.	UNIT TYPE	LOCATION	AREA	BASIS	RESIDENCE		VALUE	% INTEREST	VOTES
					% INTEREST	INTERESTS			
4101 3br	End		1912	\$ 1,577,400.00	1.051572%	# 1 - 12	\$ 131,450.00	0.087631%	0.0929
4102 3br	Center		1912	\$ 1,577,400.00	1.051572%	# 1 - 12	\$ 131,450.00	0.087631%	0.0929
4103 3br	Center		1912	\$ 1,577,400.00	1.051572%	# 1 - 12	\$ 131,450.00	0.087631%	0.0929
4104 3br	Center		1912	\$ 1,577,400.00	1.051572%	# 1 - 12	\$ 131,450.00	0.087631%	0.0929
4105 2br	End		1626	\$ 1,341,450.00	0.894276%	# 1 - 12	\$ 111,787.50	0.074523%	0.0790
4201 3br	End		1912	\$ 1,577,400.00	1.051572%	# 1 - 12	\$ 131,450.00	0.087631%	0.0929
4202 3br	Center		1912	\$ 1,577,400.00	1.051572%	# 1 - 12	\$ 131,450.00	0.087631%	0.0929
4203 3br	Center		1912	\$ 1,577,400.00	1.051572%	# 1 - 12	\$ 131,450.00	0.087631%	0.0929
4204 3br	Center		1912	\$ 1,577,400.00	1.051572%	# 1 - 12	\$ 131,450.00	0.087631%	0.0929
4205 2br	End		1626	\$ 1,341,450.00	0.894276%	# 1 - 12	\$ 111,787.50	0.074523%	0.0790
4301 3br	End		1912	\$ 1,577,400.00	1.051572%	# 1 - 12	\$ 131,450.00	0.087631%	0.0929
4302 3br	Center		1912	\$ 1,577,400.00	1.051572%	# 1 - 12	\$ 131,450.00	0.087631%	0.0929
4303 3br	Center		1912	\$ 1,577,400.00	1.051572%	# 1 - 12	\$ 131,450.00	0.087631%	0.0929
4304 3br	Center		1912	\$ 1,577,400.00	1.051572%	# 1 - 12	\$ 131,450.00	0.087631%	0.0929
4305 2br	End		1626	\$ 1,341,450.00	0.894276%	# 1 - 12	\$ 111,787.50	0.074523%	0.0790
4401 3br	End		1912	\$ 1,577,400.00	1.051572%	# 1 - 12	\$ 131,450.00	0.087631%	0.0929
4402 3br	Center		1912	\$ 1,577,400.00	1.051572%	# 1 - 12	\$ 131,450.00	0.087631%	0.0929
4403 3br	Center		1912	\$ 1,577,400.00	1.051572%	# 1 - 12	\$ 131,450.00	0.087631%	0.0929
4404 3br	Center		1912	\$ 1,577,400.00	1.051572%	# 1 - 12	\$ 131,450.00	0.087631%	0.0929
4405 2br	End		1626	\$ 1,341,450.00	0.894276%	# 1 - 12	\$ 111,787.50	0.074523%	0.0790
5101 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
5102 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
5103 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
5201 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
5202 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
5203 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
5301 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
5302 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
5303 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
5401 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
5402 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
5403 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
6101 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
6102 2br - Suites	Center		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
6103 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
6201 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
6202 2br - Suites	Center		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
6203 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
6301 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
6302 2br - Suites	Center		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
6303 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
6401 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
6402 2br - Suites	Center		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
6403 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
CU-1 Commercial Unit			2573	\$ 2,122,725.00	1.415112%	#1	\$ 2,122,725.00	1.415112%	1.5000
24 Unit 2-Bedroom Suites			37,248	30,729,600	20.485857%	12 X	2,560,800	1.707155%	1.8096
45 Unit 2-Bedroom Allocation			73,170	60,365,250	40.242434%	12 X	5,030,438	3.353536%	3.5547
36 Unit 3 Bedroom Allocation			68,832	56,786,400	37.856597%	12 X	4,732,200	3.154716%	3.3440
1 Commercial Unit			2,573	2,122,725	1.415112%	1X	2,122,725	1.415112%	1.5000
106 Unit Allocation			181,823	150,003,975	100.000000%	12 X	14,446,163	9.630520%	10.2084

# **EXHIBIT 5**



205-27-H  
Office of the Lieutenant Governor  
Division of Corporation & Trademarks  
Kongens Gade No. 18, Charlotte Amalie  
St. Thomas, Virgin Islands, 00802

Rec. 3-2-2000

## ARTICLES OF INCORPORATION

OF

### GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.

The name of the corporation is Great Bay Condominium Owners Association, Inc., referred to hereinafter as the Association. This Association is formed as a not for profit corporation pursuant to the provisions of Title 13 Virgin Islands Code Chapter 3.

#### ARTICLE II

##### OBJECTS AND PURPOSES

The objects and purposes for which the Association is formed are:

- A. To provide the owners of the Great Bay Condominium located at Parcel(s) of real property subdivided from Parcel No. 4 Estate Nazareth, No. 1 Red Hook Quarter, St. Thomas, U.S. Virgin Islands with an association for benevolent, fraternal and social purposes and to conduct the activities of an association of condominium owners pursuant to Title 28 Virgin Islands Code Chapter 33;
- B. To promote the general welfare of the Association and its Members and to enforce the provisions of the Declaration, Bylaws and Rules and Regulations of Great Bay Condominium as the same may be amended from time to time.
- C. To cultivate a spirit of helpful cooperation among its members;
- D. When units are transferred by Sponsor, to accept the rights and to assume the obligations imposed upon the Association under the Declaration of Condominium ("Declaration") to be recorded at the Office of the Recorder of Deeds for St. Thomas and St. John U.S. Virgin Islands, as amended from time to time and to enforce said rights and to perform said obligations for the benefit of all the members of the Association;

#### ARTICLE III

##### PRINCIPAL OFFICE AND RESIDENT AGENT; TERMS

The principal office of the Association is at Parcel 4 Estate Nazareth, No. 1 Red Hook Quarter, St. Thomas, Virgin Islands, and the resident agent is St. Thomas Registered Agents, Inc., whose mailing address is 24-25 Kongens Gade, St. Thomas, Virgin Islands 00802. All capitalized terms used herein shall have the same meanings ascribed to them in the Declaration of Condominium of Great Bay Condominium.

## ARTICLE IV

### POWERS

The Association shall have all powers which an association of condominium owners is entitled under the laws of the Virgin Islands of the United States including specifically Title 28 Virgin Islands Code Chapter 33 and shall specifically have the power to acquire, own and convey real and personal property, to make and collect assessments against members to defray the expenses of the corporation in administrating the affairs of the Condominium, enforcing the Declaration and to use the proceeds of the assessments in carrying out the objects and purposes for which the Association is formed.

## ARTICLE V

### COMMENCEMENT AND CONTINUANCE

The Association shall commence upon the filing of these Articles of Incorporation and the Association shall have perpetual existence.

## ARTICLE VI

### SHARES

No certificates of shares shall be issued as the voting rights of Members shall be determined by the percentage interest set forth per Residence in the Declaration as amended from time to time.

## ARTICLE VII

### MEMBERSHIP

Membership in the Association, qualifications and rights of members shall be as follows:

A. All owners of Residences in Great Bay Condominium shall become Members of the Association upon obtaining legal title thereto.

B. Annual common charges shall be assessed on each Residence in accordance with its percentage interest in the common areas and facilities of Great Bay Condominium as described in the Declaration, as amended from time to time, and shall be timely paid by the owner thereof to the Association in an amount to be set by the Board of Directors. The common charges shall be due the earlier of (i) prior to occupancy of a Residence or (ii) on the first day of January of the year commencing after the completion of such Member's Residence and continuing each year thereafter at the same time. Declarant shall not be liable for such annual dues until it has sold ninety percent (90%) of the interests appurtenant to all the Residences in the Condominium. In the event of the failure of any Member to pay any

assessment imposed by the Association, the Association shall have all rights to collect such assessment in any manner authorized by law including but not limited to the remedies provided in Title 28 Virgin Islands Code Chapter 33 and in addition the Association shall have the right to collect any other sums owing by legal action if necessary, as provided in the Declaration.

C. No Member shall receive a stock certificate evidencing membership as ownership of a Residence entitles the Member to a vote in accordance with the percentage of the common areas and facilities assigned to the Residence in the Declaration, as amended from time to time.

D. Right to membership in the Association shall be established by the records of the Recorder of Deeds for St. Thomas and St. John as to the owner of record for the said Residence. Membership shall be appurtenant to and may not be separated from ownership of any said Residence and ownership of such Residence shall be the sole qualification for membership. Membership shall automatically terminate upon sale or other disposition of title as and when change in ownership is recorded in the public records.

E. Membership in the Association may not be assigned, hypothecated or transferred in any manner except with the sale of a Residence.

F. Each Member of the Association shall be entitled to vote equal to the percentage interest in the common areas and facilities as provided in the Declaration, as amended from time to time. Where title to a Residence is held by more than one person, jointly or otherwise, or an association, firm, corporation or trust, the owners thereof shall collectively be entitled to vote once per Residence owned, which shall be exercised as said owners determine among themselves and advise the Secretary prior to any meeting.

G. Voting rights will be exercised in the manner provided in the aforescribed Declaration, the provisions of these Articles of Incorporation, the Bylaws and the Rules and Regulations of the Association as the same may be amended from time to time and the Condominium Act of the Virgin Islands (Title 28 Virgin Islands Code Chapter 33).

#### ARTICLE VIII

#### INDEBTEDNESS

The highest amount of indebtedness to which the Association shall at any time be subject is a vote of the Board of Directors of the Association and shall not exceed \$100,000.

#### ARTICLE IX

#### MANAGEMENT

The management of the Association shall be vested in a Board of Directors whose number shall be as established by the Bylaws but shall not be fewer than three (3). The Board of Directors shall be elected annually at the annual meeting of the Association, must be members of

the Association in good standing, shall be elected by a majority vote, and shall serve until their successors are elected and qualify. The Board of Directors shall elect from among its members, by a majority vote, a President, one or more Vice Presidents, a Treasurer and a Secretary who shall serve as such at the pleasure of the Board. Vacancies occurring in the Board between annual meetings may be filled by a majority vote of the remaining members of the Board even though the remaining members of the Board do not constitute a quorum as set forth in the Bylaws. The Board may contract in the name of the Association with individual Directors or members in their individual capacity, or as members of any firm, association or corporation and may contract for the management of the Association for terms not exceeding five (5) years.

#### ARTICLE X

#### INCORPORATORS

The names and places of residence of persons forming the Association are:

Cecilia Greaux Questel	15D Estate Mandahl, St. Thomas, Virgin Islands 00802
Amanda A. Querrard	14A Estate Hull, St. Thomas, Virgin Islands 00802
Gynah N. Guishard	23-15 Estate Mandahl, St. Thomas, Virgin Islands

#### ARTICLE XI

#### BYLAWS

The Bylaws of the Association shall be, adopted by the Board of Directors of the Association, may be altered or amended at any annual meeting or at any duly called meeting for that purpose, provided the notice of the meeting shall set forth the purpose, and the proposed amendment to the Bylaws, provided votes held by all of the members of the Association approve such amendment or alteration and subject to any limitations contained in the Declaration or the Condominium Act (Title 28 Virgin Islands Code Chapter 33).

#### ARTICLE XII

#### INDEMNIFICATION

Any person made a party to any action, suit or proceeding, by reason of the fact that he, his, testator or intestate representative is or was a Director or officer of the Association shall be indemnified by the Association against the reasonable expenses, including attorney's fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceedings, or in connection with any appeal therein, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding, or in connection with any appeal therein

that such Officer or Director is liable for willful misconduct in the performance of his duties. The foregoing right of indemnification shall not be deemed exclusive of any other rights to which any Officer or Director may be entitled apart from the provisions of this Article.

ARTICLE XIII

AMENDMENTS

These Articles of Incorporation may be amended by an affirmative vote of a majority of the votes of all the Members entitled to vote thereon and all rights conferred upon Members herein are granted to this reservation and the Declaration, as amended.

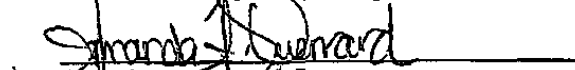
ARTICLE XIV


DISSOLUTION

Upon dissolution the assets of the corporation shall be distributed to the members in accordance with their percentage interest in the property as provided in the Declaration of Condominium, as amended from time to time.

In Witness Whereof, the undersigned incorporators have hereunto set their hands and seals this 2nd day of March, 2000.

  
Cecilia Greaux Questel, Incorporator

  
Amanda A. Querrard, Incorporator

  
Gynah N. Guishard, Incorporator

TERRITORY OF THE VIRGIN ISLANDS )  
DISTRICT OF ST. THOMAS & ST. JOHN ) ss:

The foregoing was acknowledged before me this 2<sup>nd</sup> day of March, 2000, by Cecilia Greaux Questel, Amanda A. Querrard and Gynah N. Guishard, as incorporators.

  
NOTARY PUBLIC

Jayne A.C. Kellogg  
Notary Public No. NP-58-97  
My Commission Expires: 03/11/2001  
District of St. Thomas and St. John  
Territory of the U.S. Virgin Islands

# **EXHIBIT 6**

GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.

BYLAWS

ARTICLE I

NAME AND MEMBERSHIP QUALIFICATIONS

Section 1. Name.

The name of the association shall be Great Bay Condominium Owners Association, Inc. (sometimes hereinafter the "Association") which was created to manage and operate Great Bay Condominium (the "Condominium").

Section 2. Membership Qualifications.

Membership in the Association shall be open only to Owners of Residences as defined in the Declaration of Condominium of Great Bay Condominium (the "Declaration") and Members as defined in the Supplementary Declaration of Great Bay Condominium (the "Supplementary Declaration") both dated May 10, 2002 and both as Recorded at the Office of the Recorder of Deeds for St. Thomas and St. John, Virgin Islands, as amended from time to time (hereinafter collectively, the "Declarations"), located at subdivision(s) of Parcels No. 4 Estate Nazareth, No. 1 Red Hook Quarter, St. Thomas, U. S. Virgin Islands as reflected in the records of Office of the Recorder of Deeds and in contracts of sale on file with the Secretary of the Association. Joint or several membership of one such Residence shall be counted as entitling such owners to one membership and one vote collectively in accordance with the percentage interest expressed in the Declarations, but each such joint owner may attend meetings. Ownership of a parcel by other than a natural person shall be represented by a duly appointed representative.

ARTICLE II

MEETINGS

Section 1. Special Meetings.

Special meetings of Members for any purpose or purposes other than those regulated by statute affecting the interests of the Members may be called by resolution of the Board of Directors or by the President, and must be called by the President at the request in writing signed by Members holding at least sixty-six and two-thirds percent (66-2/3%) of the total appurtenant interest in the common areas and facilities of the Condominium.

Section 2. Notice of Special Meetings.

Notice of special meetings shall be given by the Secretary or, in the Secretary's absence, any other officer, and shall be served personally or by certified mail, return receipt requested, addressed to each Member at the address appearing on the books of the Association no less than thirty (30) days prior to the date of such meeting. The notice of such meeting shall contain a statement of the business to be transacted thereat. No business other than that specified in the call for the meeting shall be transacted at any such special meeting. Notice of a special meeting may be waived by any Member by written waiver or by personal attendance thereat.

#### Section 3. Voting.

Members entitled to vote at meetings may do so, in person or by proxy appointed by an instrument in writing subscribed by the Member or by his duly authorized attorney. Each Member shall be entitled to vote the percentage interest in the Residence specified in the Declarations, as amended from time to time.

#### Section 4. Quorum.

At any meeting of the Members of the Association, except as otherwise provided by the Declarations or by the Articles of Incorporation, the presence, in person or by proxy of Members holding thirty percent (30%) of the percentage interest represented by all of the Residences shall constitute a quorum at an annual or a special meeting. However, a lesser number when not constituting a quorum may adjourn the meeting from time to time until a quorum shall be present or represented.

#### Section 5. Voting at Members Meetings.

At any meeting of the Members, except as otherwise provided by the Articles of Incorporation, or by the Declarations, a majority of the percentage interests in the Association cast by Members present in person or by proxy shall decide any question brought before such meeting.

#### Section 6. Informal Action by Members.

Any action which may be taken at any meeting of Members may be taken without a meeting if a consent in writing setting forth the action shall be signed by all of the Members entitled to vote on the action and shall be filed with the Secretary of the Association. This consent shall have the same effect as a unanimous vote at any Members' meeting.

### ARTICLE III

#### BOARD OF DIRECTORS

##### Section 1. Number.

The affairs of the Association shall be managed by a Board of five (5) directors.



#### Section 2. Selection.

The initial directors shall be selected and appointed by the Declarant of the Condominium and shall serve until the first annual meeting of Members. At the first annual meeting of Members, the person duly elected by the votes cast at the election held thereat shall become the directors for the ensuing year. At the first election, one director shall be elected for a one year term, two directors shall be elected for a two year term and two directors shall be elected for a three year term. Thereafter, the term of each election shall be as provided in Section 3 below.

#### Section 3. Term of Office.

The term of office of each of the directors shall be for three years.

#### Section 4. General Duties and Powers of Directors.

The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not inconsistent with the Declaration, Articles of Incorporation, or Bylaws or directed thereby to be done and exercised exclusively by the Members. These powers and duties include the power to adopt rules and regulations deemed necessary and to impose sanctions for violation thereof, including, without limitation, fines which may be collected as provided in the Declaration and the Articles of Incorporation, and to carry out and perform the other obligations and responsibilities imposed on the Association under the said Declaration.

#### Section 5. Meetings of the Board of Directors.

Regular meetings of the Board of Directors shall be held annually no less frequently than as the Board may determine. Special meetings of the Board of Directors may be called by the President at any time and must be called by the President, or the Secretary upon the written request of three (3) directors.

#### Section 6. Notice of Special Meetings.

Written notice of special meetings of the Board of Directors setting forth the time and the place of the meetings, shall be given to each director at his last known address no less than ten (10) days prior to the date of such meeting. The notice of such meeting may be given either personally or by sending a copy through the mail or by telex, cable or telegram, charges prepaid, to the address of each director appearing on the books of the Association and shall contain a statement of the business to be transacted thereat. No business other than that specified in the call for the meeting shall be transacted at any such special meeting. Notice of a special meeting may be waived by any director by written waiver or by personal attendance thereat.

#### Section 7. Quorum.

At any meeting of the Board of Directors a majority of the directors in office shall constitute a quorum. However, a lesser number when not constituting a quorum may adjourn the meeting from time to time until a quorum shall be present or represented.

#### Section 8. Voting.

The affirmative vote of a majority of the directors present at any meeting of the Board of Directors at which quorum is present shall constitute the act of the Board.

#### Section 9. Informal Action.

Any action which may be taken at any meeting of directors may be taken without a meeting if a consent in writing setting forth the action shall be signed by all of the directors entitled to vote on the action and shall be filed with the Secretary. This consent shall have the same effect as a unanimous vote at any directors meeting.

#### Section 10. Vacancies.

Vacancies in the Board of Directors occurring between annual meetings of the Members shall be filled for the unexpired portion of the term by a majority vote of the remaining directors, even though the directors present may constitute less than a quorum.

#### Section 11. Removal of Directors.

Any director may be removed, either with or without cause at any time by a vote of the majority of the Members of the Association at any meeting called for such purpose.

### ARTICLE IV

#### OFFICERS

##### Section 1. Number of Officers.

The officers of the Association shall be a President, one or more Vice Presidents, a Treasurer and a Secretary, and shall be elected from among the directors of the Board. The Board of Directors may elect such other officers, including an Assistant Secretary and Assistant Treasurer, and appoint such agents and employees as in their sole discretion they shall deem advisable, who shall be subject to recall at all times by a majority vote of the Board of Directors. Any two offices (but not more than two), other than the offices of President and Secretary, may be held by the same person.

##### Section 2. Election of Officers.

The officers of the Association shall be elected annually by the Board of Directors at its meeting held immediately after the annual meeting of Members and shall hold office for one (1) year and until their successors have been duly elected and qualified.

### Section 3. Removal of Officers.

Any officer may be removed, with or without cause, and a successor elected, by a majority vote of the Board of Directors, regularly convened at a regular or special meeting.

### Section 4. President.

The President shall be the chief executive officer of the Association and shall have general charge of the business affairs and property thereof, subject to direction of the Board of Directors, and shall have general supervision over its officers and agents. He shall, if present, preside at all meetings of Members and may do and perform all acts incident to the office of President.

### Section 5. Vice President.

In the absence of or inability of the President to act, the Vice President shall perform the duties and exercise the powers of the President and shall perform such other functions as the Board of Directors may from time to time prescribe.

### Section 6. Secretary.

The Secretary shall keep the minutes of the meetings of the Board of Directors and of the Members in appropriate books; give and serve all notices at all meetings of the Association; be custodian of the records and of the seal of the Association, and affix the latter to such instruments or documents as may be authorized by the Board of Directors; keep the membership books in such a manner as to show at any time the names of the Members alphabetically arranged and their respective places of residence, or their Post Office addresses, and the time at which each person became a Member; and do and perform all other duties incident to the office of Secretary.

### Section 7. Treasurer.

The Treasurer shall have the care and custody of and be responsible for all general funds and securities of the Association and establish a "Maintenance Fund" for the deposit of such funds in the name and to the credit of the Association in such a bank or other federally insured financial institution as the directors may designate; exhibit at all reasonable times his books and accounts to any director or, upon written request therefor, any Member; render a statement of the condition of the general finances of the Association at each stated meeting of the Board of Directors if called upon to do so, and a full report at the annual meeting of Members. He shall keep such books of account as the Board of Directors may require and he shall do and perform all other duties incident to the office of Treasurer.

#### Section 8. Duties of Officers May Be Delegated.

In the case of the absence of any officer of the Association, or for any reason the Board may deem sufficient, the Board may, except as otherwise provided in these Bylaws, delegate the powers or duties of such officers to any other officer, any director, or management company under contract with the Association for the time being, provided a majority of the entire Board concur therein.

#### Section 9. Vacancies.

Should any vacancy occur by death, resignation or otherwise, the same shall be filled, without undue delay, by the Board of Directors at its next regular meeting or at a special meeting called for that purpose.

#### Section 10. Bank Accounts and Expenditures.

All disbursements of funds from any Association account, including the Maintenance Fund, shall require the signatures of two (2) officers, or by the management company if a management company has been retained by the Board to manage the Association, and all expenditures in excess of \$20,000.00 of unbudgeted funds at any one time shall require the prior approval of the Board of Directors.

### ARTICLE V

#### COMMITTEES

Committees to perform such tasks and to serve for such periods as may be designated by resolution adopted by a majority of the directors present at a meeting at which a quorum is present are hereby authorized. Such committee shall perform such duties and have such powers as may be provided in the resolution. Each committee shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board.

### ARTICLE VI

#### COMPENSATION OF DIRECTORS & OFFICERS

The directors and the officers shall receive no compensation for their duties as such. The Board of Directors may, however, by majority vote thereof, reimburse any director and any officer for actual expenses incurred by such director or officer on behalf of the Association.

ARTICLE VII

## AMENDMENTS

These Bylaws may be amended by the Members of the Association at any regular or special meeting duly called for that purpose by the affirmative vote of not less than fifty-one percent (51%) of Members of the Association in accordance with their percentage interest assigned in the Declarations. Notwithstanding the foregoing, those provisions of these Bylaws which are governed by the Declarations or by Virgin Islands law may not be amended, repealed or altered except as provided in said Declarations or by applicable law.

ARTICLE VIII

## INDEMNIFICATION

Any person made a party to any action, suit or proceeding by reason of the fact that he is or was a director, officer or employee of this Association shall be indemnified by this Association against the reasonable expense, including attorney's fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceedings, or in connection with any appeal therein, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such officer, director or employee is liable for gross negligence or misconduct in the performance of his duties. Such right of indemnification shall not be deemed exclusive of any other rights to which such director, officer or employee may be entitled apart from the provisions of this Article VIII.

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# **EXHIBIT 7**

**ARTICLES OF INCORPORATION**  
**OF**  
**THE NEIGHBORHOOD ASSOCIATION, INC.**  
**(A Corporation Not for Profit)**

We the undersigned, being natural persons competent to contract, for the purpose of forming a corporation not for profit pursuant to the provisions of Title 13 Virgin Islands Code Chapter 3, do hereby adopt, subscribe and acknowledge the following Articles of Incorporation:

**ARTICLE I. NAME AND ADDRESS**

The name of the corporation is The Neighborhood Association, Inc. (hereinafter referred to as the "Association"). The street and mailing address of the initial office of the Association is Parcel 4 Estate Nazareth, No. 1 Red Hook Quarter, St. Thomas, U.S. Virgin Islands.

**ARTICLE II. TERM OF EXISTENCE, COMMENCEMENT AND CONTINUANCE**

The Association shall commence upon the filing of these Articles of Incorporation and the Association shall have perpetual existence.

**ARTICLE III. OBJECTS AND PURPOSES**

The objects and purposes for which the Association is formed are:

A. To provide the owners of interval ownership interests in condominium units in Buildings G and H ("Suite Interests") of Great Bay Condominium (the "Condominium") with an entity responsible for administering a commercial unit in the Condominium ("Unit"), which Unit the Association initially contemplates leasing, licensing for use or owning for food and beverage service, located in St. Thomas, U.S. Virgin Islands;

B. To promote the general welfare of the Association and its Members, and to enforce the provisions of the Bylaws and Rules and Regulations of the Association as the same may be amended from time to time;

C. To cultivate a spirit of helpful cooperation among its Members;

D. At such time as the Association licenses, owns or leases the Unit, to accept the rights and to assume the obligations imposed upon the Unit under that certain Declaration of Condominium for the Condominium and Supplementary Declaration for the Condominium (collectively, the "Declaration" as such are as amended from time to time) to enforce said rights and to perform said obligations for the benefit of all the members of the Association; and



E. To act as the governing association of the Association and for any other lawful purposes.

#### **ARTICLE IV. POWERS**

The Association shall have all powers which are not in conflict with these Articles together with such additional specific powers as are contained in the Bylaws and shall specifically have the power to acquire licenses, own and convey real and personal property, to make and collect assessments against members to defray expenses of the Association in administering the affairs of the Association, enforcing the Rules and Regulations of the Association and to use the proceeds of the assessments in carrying out the objects and purposes for which the Association is formed.

#### **ARTICLE V. QUALIFICATION OF MEMBERS, THE MANNER OF THEIR ADMISSION, AND VOTING**

Section 1. RC Hotels (Virgin Islands), Inc., its successors and/or assigns (hereinafter referred to as "Developer") shall initially hold all memberships in the Association until such time as the purchase of a Suite Interest in the Condominium, then the owner thereof shall also become a member of the Association.

Section 2. Ownership of a Suite Interest shall be a prerequisite to exercising any rights as a member of the Association. All owners of Suite Interests in the Condominium shall become members of the Association upon obtaining legal title thereto and no other persons shall be entitled to membership. Ownership may be held by one or more individuals or by a corporation, partnership, trust or any other appropriate legal entity with the power to hold title.

Section 3. Annual common charges for the Association shall be assessed on each Suite Interest in an amount equal to 1/288<sup>th</sup> of the annual common charges of the Association, and shall be timely paid by the owner thereof to the Association in an amount to be set by the Board of Directors. In the event of the failure of any member to pay any assessment imposed by the Association, the Association shall have all rights to collect such assessment as provided for in the Bylaws or any other governing documents of the Association and in any manner authorized by law. In addition, the Association shall have the right to collect any other sums owing by legal action.

Section 4. Right to membership in the Association shall be established by the records of the Recorder of Deeds for St. Thomas and St. John as to the owner of record for the said Suite Interest. Membership shall be appurtenant to and may not be separated from ownership of any said Suite Interest and ownership of such Suite Interest shall be the sole qualification for membership. Membership shall automatically terminate upon sale or other disposition of title, in accordance with the provisions of the Declaration. The transferor's membership shall automatically transfer and be vested in the new owner succeeding to the ownership interest in the Suite Interest subject to a lien thereon for all unpaid assessments and charges. The Association may rely upon evidence of a recorded deed as evidence of the

transfer of ownership and thereupon terminate the transferor's membership and recognize the membership of the transferee.

Section 5. Membership in the Association may not be assigned, hypothecated or transferred in any manner except with the conveyance of a Suite Interest. Membership shall terminate upon the termination of the Declaration or upon transfer of ownership of a Suite Interest, provided the transfer is accomplished in accordance with all of the provisions of the Declaration.

Section 6. The owner(s) of each Suite Interest shall be entitled to one vote for each Suite Interest owned, as described in the Bylaws. The vote of each Suite Interest shall not be divisible.

Where title to a Suite Interest is held by more than one person, jointly or otherwise, or an association, firm, corporation, trust, partnership or other legal entity, the owners thereof shall collectively be entitled to one vote per Suite Interest owned, which shall be exercised as said owners determine among themselves.

#### **ARTICLE VI. INDEBTEDNESS**

The highest amount of indebtedness to which the Association shall at any time be subject is as voted by the Board of Directors of the Association and shall not exceed \$100,000.

#### **ARTICLE VII. INCORPORATORS**

The names and places of residence of the persons forming the Association are as follows:

<u>Name</u>	<u>Address</u>
James H. Hindels	Parcel No. 6D-12 Estate Nazareth St. Thomas, Virgin Islands 00802
Claude Berry	Parcel No. 9A-6 Estate Lerkenlund St. Thomas, Virgin Islands 00802
Camela Francis	Parcel No. 394A-10 Estate Annas' Retreat St. Thomas, Virgin Islands 00802

#### **ARTICLE VIII. MANAGEMENT**

The management of the Association shall be vested in a Board of Directors whose number shall be as established by the Bylaws but shall not be fewer than three (3) nor more than five (5). The Board of Directors shall be elected pursuant to the Bylaws of the Association, must be members (or employees, officers, directors or authorized representatives

of a member which is a legal entity e.g., corporation, association, firm, trust or partnership) of the Association in good standing, shall be elected by a majority of the vote, and shall serve until their successors are elected and qualify. The Board of Directors shall elect from among its members, by majority vote, a President, one or more Vice Presidents, a Treasurer and a Secretary who shall serve as such at the pleasure of the Board. Vacancies occurring in the Board between annual meetings may be filled by a majority vote of the remaining members of the Board even though the remaining members of the Board do not constitute a quorum as set forth in the Bylaws. The Board may contract in the name of the Association with individual Directors or members in their individual capacity, or as members of any firm, association or corporation and may contract for the management of the Association. The number, terms of office and provisions regarding election, removal and filling of vacancies on the Board of Directors shall be as set forth in the Bylaws of the Association.

#### **ARTICLE IX. BYLAWS**

The Bylaws of the Association are to be made and approved by the initial Board of Directors of the Association, and thereafter may be amended, altered, modified or rescinded as set forth in the Bylaws and as permitted by law.

#### **ARTICLE X. AMENDMENTS TO THE ARTICLES OF INCORPORATION**

Section 1. These Articles of Incorporation may be amended by an affirmative vote of two-thirds of the votes of all the members of the Association entitled to vote thereon, or by written consent of all members without a meeting.

Section 2. Notwithstanding anything herein to the contrary, no amendment shall make any change in the qualifications for membership without approval in writing of all the members of the Association. No amendment which affects the rights and privileges provided to the Developer in Title 13, Chapter 3 or Title 28, Chapter 33 of the Virgin Islands Code or the Declaration shall be effective without the written consent of the Developer.

#### **ARTICLE XI. ADDITIONAL PROVISIONS**

Section 1. No officer, director or member shall be personally liable for any debt or other obligation of the Association.

Section 2. The Association shall not be operated for profit. This corporation is organized under a non-stock basis, no dividend shall be paid, and no part of the income of the Association shall be distributed to its members, directors or officers. The Association may pay compensation in a reasonable amount to its members, directors or officers for services rendered, and may confer benefits upon its members as permitted by law. No such payment, benefit or contribution shall be deemed to be a dividend or distribution of income.

Section 3. Every director and every officer of the Association, any person made a party to any action, suit or proceeding, by reason of the fact that he, his testator or intestate representative is or was a director or officer of the Association, shall be indemnified by the

Association for all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved by reason or his being or having been a director or officer at the time such expenses are incurred, except in such cases wherein the director or the officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement, the indemnification herein shall apply only when the Board of Directors has approved such settlement and reimbursement as being in the best interests of the Association. The foregoing indemnification shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.

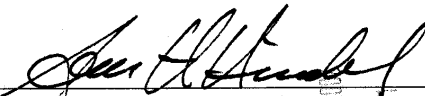
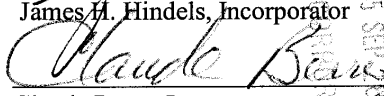
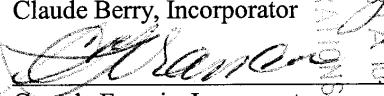
**ARTICLE XII. PRINCIPAL OFFICE AND RESIDENT AGENT**

The principal office of the Association is Parcel 4 Estate Nazareth, No. 1 Red Hook Quarter, St. Thomas. Virgin Islands and the resident agent is The Prentice-Hall Corporation System, Inc., whose mailing address is Citibank Bldg. Suite 208, Veterans Drive, P.O. Box 305304, St. Thomas, U.S. Virgin Islands 00803.

**ARTICLE XIII. DISSOLUTION**

Upon dissolution the assets of the corporation shall be distributed to the members of the Association in an amount equal to 1/288<sup>th</sup> for each Suite Interest.

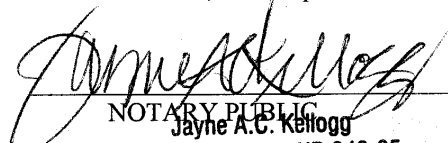
In Witness Whereof, the undersigned incorporators have hereunto set their hands and seals this 28 day of September, 2005.

  
James H. Hindels, Incorporator  
  
Claude Berry, Incorporator  
  
Camela Francis, Incorporator

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ST. JOHN OFFICE  
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TERRITORY OF THE VIRGIN ISLANDS )  
DISTRICT OF ST. THOMAS & ST. JOHN ) ss:

The foregoing was acknowledged before me this 28 day of September, 2005, by James H. Hindels, Claude Berry and Camela Francis, as incorporators.

  
NOTARY PUBLIC  
Jayne A.C. Kellogg  
Notary Public No. NP-048-05  
My Commission Expires: June 26, 2009  
District of St. Thomas and St. John

# **EXHIBIT 8**

**BYLAWS**  
**OF**  
**THE NEIGHBORHOOD ASSOCIATION, INC.**

**ARTICLE I**

**IDENTITY**

The name of the association is The Neighborhood Association, Inc. (hereinafter referred to as the "Association"). The Association is a corporation, not for profit, organized and existing pursuant to the provision of Title 13 Virgin Islands Code, Chapter 3, for the purpose of administering (but not exclusively, unless so provided in the Association's Articles of Incorporation) the corporation created by the Articles of Incorporation dated September 28, 2005. The following Bylaws shall govern the operation of said Association.

Section 1. Office of Association: The office of the Association shall be in care of Parcel 4 Estate Nazareth, No. 1 Red Hook Quarter, St. Thomas, Virgin Island or at such other place as may subsequently be designated by the Board of Directors of the Association.

Section 2. Definitions: As used herein, the word "Association," shall mean The Neighborhood Association, Inc. and "Association Member" shall be interchangeable with "Member" of such Association, and shall mean the person (natural or otherwise) who, by virtue of ownership of a Suite Interest in buildings "G" and "H" of the Condominium ("Suite"), is a Member of the Association unless specifically excluded. "Board of Administration" or "Board of Directors" or "Board" shall be used interchangeably and shall mean, as used herein, the governing body of the Association. All other words used herein, shall have their definitions attributed to them in the Articles of Incorporation of the Association ("Articles"), unless specifically defined otherwise.

**ARTICLE II**

**MEMBERSHIP QUALIFICATIONS AND VOTING PROVISIONS**

Section 1. Membership: Membership in the Association shall be open only to owners of Suite Interests of the Condominium, which Condominium was established pursuant to that certain Declaration made on May 10, 2002 and recorded in the Office of the Recorder of Deeds for St. Thomas and St. John on May 31, 2002, as Document No. 20022002741 as amended from time to time, (hereinafter the "Declaration") establishing a plan for such Condominium, as subsequently amended and expanded. Transfer of ownership of a Suite Interest in the Condominium, either voluntary or by operation of law, shall automatically

terminate membership in the Association, and said membership is to become vested in the transferee. If ownership of a Suite Interest in the Condominium is vested in more than one person, then such ownership shall be counted as entitling such owners to one membership and one vote collectively in accordance with these Bylaws and the Articles, but each such joint owner of a Suite Interest may attend Association meetings. Ownership of a Suite Interest by other than a natural person shall be represented by a duly appointed representative.

Section 2. Quorum: Unless otherwise provided in these Bylaws or by the Articles, the presence in person or by proxy of Members of the Association holding fifteen percent (15%) of the percentage interest represented by all of the Members of the Association shall constitute a quorum at an annual or a special meeting. However, a lesser number when not constituting a quorum may adjourn the meeting from time to time until a quorum shall be present or represented.

Section 3. Proxies: Votes may be cast in person or by proxy in accordance with controlling law. To the extent permitted by law, votes may also be cast electronically or by any other means in accordance with procedures established by the Board. All proxies shall be in writing and signed by the person entitled to vote (as set forth below in Section 5). Where a Suite Interest is owned jointly by a husband and wife, and if they have not designated one of them as a voting member, a proxy must be signed by both husband and wife where a third person is designated.

Any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned meeting thereof. In no event shall any proxy be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Each proxy shall specifically set forth the name of the person voting by proxy, the name of the person authorized to vote by proxy, and the date the proxy was given and shall contain the date, time and place of the meeting for which the proxy is given, and if a limited proxy, shall set forth those items which the holder of the proxy may vote, and the manner in which the vote is cast. If a proxy expressly provides, any proxy holder may appoint, in writing, a substitute to act in his place. If such provision is not made, substitution of proxy is not authorized. Every proxy shall be revocable at any time at the sole discretion of the member executing it.

Section 4. Designation of Voting Member: If one (1) person owns a Suite Interest, his or her right to vote shall be established by the recorded title to the Suite. If a Suite Interest is owned by more than one (1) person, the person entitled to cast the vote for the interest shall be designated in a certificate, signed by all of the record owners of the Suite Interest and filed with the Secretary of the Association. If a Suite Interest is owned by Members other than a natural person (e.g., in the case of a corporation, limited liability company, or partnership, an officer, employee, partner or individual thereof entitled to cast the vote for such legal entity) there shall be a certificate designated for this purpose, signed by the President or Vice-President of the legal entity and attested by the Secretary or Assistant Secretary in the case of a corporation, the managing member(s) in the case of a limited liability company, or a general partner in the case of a general or limited partnership, and filed with the Secretary of the Association. The person designated in such certificate who is entitled to cast a vote for an interest shall be known as the "voting member". Such certificate shall be valid until revoked or superseded by a subsequent

certificate, or until a change in the ownership of the interest concerned. If such a certificate is not on file with the Secretary of the Association for an interest owned by more than one person or by such legal entity, the vote of the interest concerned shall not be considered in determining the requirement for a quorum, nor for any purpose requiring the approval of a person entitled to cast the vote for the interest, except if said interest is owned by a husband and wife. In the event a Suite Interest is owned jointly by a husband and wife, the following provisions are applicable:

- (a) The voting interest of a Suite Interest held by a husband and wife (collectively, "spouses") may not be split.
- (b) The spouses may, but shall not be required to, designate a voting member.
- (c) If the spouses do not designate a voting member and if both are present at a meeting and are unable to concur in their decision upon any subject requiring a vote, the vote shall not be counted by the Board until the spouses reach a unanimous decision on such subject.
- (d) If the spouses do not designate a voting member, and only one is present at a meeting, the present spouse may cast the vote, just as though such spouse owned the Suite Interest individually, and without establishing the concurrence of the absent spouse.

Section 5. Votes subject to Suite Interest: Notwithstanding any other provision in these Bylaws, each Owner of a Suite Interest shall be entitled to cast one vote for each Suite Interest owned. In the case of a Suite Interest, the provisions in Section 4 (Proxies) and Section 5 (Designation of voting member), shall apply to each Suite Interest therein.

### ARTICLE III

#### MEETINGS

Section 1. Annual and Special Meetings: Special meetings of Members for any purpose or purposes other than those regulated by statute affecting the interests of the Members may be called by resolution of the Association's Board of Directors or by the President, and must be called by the President at the request in writing signed by a super majority of the Members of the Association. Annually a meeting of Members shall be held in St. Thomas, Virgin Islands at the offices of the Association at any date time and place as may be fixed by the Board of Directors.

Section 2. Notice of Annual Meetings: Notice of annual meetings shall be given by the Secretary on, in the Secretary's absence, any other officer, and shall be mailed to each Member at the address appearing on the books of the Association no less than fourteen (14) days prior to the date of such meeting. The notice of such meeting may be waived by any Member by written waiver or by personal attendance thereat.

Section 3. Notice of Special Meetings: Notice of special meetings shall be given by the



Secretary or, in the Secretary's absence, any other officer of the Association, and shall be mailed to each Member at the address appearing on the books of the Association no less than fourteen (14) days prior to the date of such meeting. The notice of such meeting shall contain a statement of the business to be transacted thereat. Notice of an annual meeting may be waived by any Member by written waiver or by personal attendance thereat.

Section 4. Waiver and Consent: Whenever the vote of Members at a meeting is required or permitted by any provision of these Bylaws to be taken in connection with any action of the Association, the meeting and vote of Members may be dispensed with not less than a super majority of the Members who would have been entitled to vote upon the action if such meeting were held and shall consent in writing to such action being taken; however, notice of such action shall be given to all Members, unless all Members of the Board approve such action.

Section 5. Adjourned Meeting: If any meeting of Members cannot be organized because a quorum is not present, either in person or by proxy, the meeting may be adjourned to a time not less than forty-eight (48) hours from the time the original meeting was called.

Section 6. Voting at Members Meetings: At any meeting of the Members, except as otherwise provided by the Articles of Incorporation, majority of the votes held by Members of Suite Interests, cast by Members of the Association present in person or by proxy, shall decide any question brought before such meeting.

#### **ARTICLE IV**

#### **BOARD OF DIRECTORS**

Section 1. Number, Term and Qualifications: The affairs of the Association shall be managed by a Board of Directors consisting of not less than three (3) nor more than five (5) individuals, as shall be determined from time to time by the Association's Board of Directors. The initial Board of Directors shall be composed of five (5) directors and may be increased or decreased from time to time by the Association in accordance with these Bylaws and shall serve until the first annual meeting of Members. All officers, general partners, managing members, or directors of a Member, which is a legal entity, or other such representatives of such a legal entity, shall be deemed Members of the Association so as to qualify a director.

Section 2. First Board and Election of Directors: The first Board of Directors of the Association who shall hold office and serve until their successors have been elected and qualified, shall be selected and appointed by the Association. These directors shall serve for terms of three (3) years.

Section 3. Powers of the Board: The Association's Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may perform all acts and functions as are not inconsistent with the Articles of Incorporation, Rules and Regulations of the Association or these Bylaws and are directed thereby to be performed and

exercised exclusively by the Members. These powers and duties include, but shall not be limited to the following powers:

- (a) Power to exercise all powers specifically set forth in the Association's Articles of Incorporation, Rules and Regulation and in these Bylaws, in Title 13 Virgin Islands Code, Chapter 3, and all powers incidental thereto.
- (b) Power to adopt rules and regulations as deemed necessary and to impose sanctions for violation thereof, including, without limitation, fines which may be collected as provided in the Articles of Incorporation and Rules and Regulations, and to carry out and perform other obligations and responsibilities imposed on the Association under said Articles and Rules.
- (c) Notwithstanding anything contained herein to the contrary, power to purchase, lease or accept conveyance of the Lounge without the vote of the Members.
- (d) Power to make and collect assessments, and use and expend said assessments to carry out the purposes and powers of the Association.
- (e) To employ, dismiss and control, subject to the terms of any contract, the personnel necessary for the maintenance and operation of the Association property, including the right and power to employ professionals, accountant, contractors, and attorneys as the need arises.
- (f) To make and amend regulations respecting the operation and use of the Association property and Lounge and the use and maintenance of the Association property and Lounge therein.
- (g) To contract a management company for the management or operation (in portions or as a whole) of the Association property and Lounge susceptible to the separate management or operation thereof, and to lease and grant concessions in such portions. Notwithstanding any provisions contained in these Bylaws to the contrary, it is the intent of these Bylaws that the ability of the Board to independently terminate a contract for the management of the Association property and Lounge without a vote of the Members pursuant to these Bylaws, if applicable, shall be governed solely by the terms and conditions of said management contract.
- (h) To further improve the Association's Property and purchase realty, items of furniture, furnishings, fixtures, and equipment for the foregoing.
- (i) To designate one or more executive committees, which, to the extent provided in the resolution designating said executive committee, shall make recommendations to the Board in connection with the scope of such committee's purpose. The committee(s) shall have such name(s) as may

be determined from time to time by the Board. The foregoing powers shall be exercised by the Board, its management company or employees, subject only to approval by Members when such is specifically required. The powers of the executive committee however, shall be limited to:

- (i) Determining the common expenses required for the operation of the Association;
  - (ii) Determining the assessments payable by Members necessary to meet the common expenses of the Association;
  - (iii) Adopting and/or amending Rules and Regulations covering the details of the operation of the Association or the Association Property;
  - (iv) Approve actions or recommend proposals to Members as required by the Articles of Incorporation, Rules and Regulations or these Bylaws, as applicable; and
  - (v) Filling vacancies on the Association's Board.
- (j) To institute, maintain, settle or appeal actions or hearings in its name on behalf of all Members of the Association concerning matters of common interests, including but not limited to the commonly used facilities and the Association's Property.
- (k) To impose a lien on each Suite Interest for any unpaid Assessments, fees or special charges imposed on the Members pursuant to these Bylaws, which shall include but shall not be limited, interests, costs and attorney's fees incurred in the collection of a delinquent payment or enforcement of the lien;
- (l) To acquire, hold, lease, mortgage and convey property including, but not limited to, Commercial Units in the Condominium and/or Suite Interests purchased at lien foreclosure sales from Condominium on behalf of the Association;
- (m) Without the joinder of any member, to modify or move any easement for ingress and egress or for utilities purposes, if the easement constitutes part of or crosses the Association's Property;
- (n) To purchase any land with the approval of two-thirds (2/3) of the total votes of the Members of the Association;
- (o) To enter into and terminate agreements, acquire leaseholds, memberships and other possessions or use interest in lands and/or facilities, such as country clubs, golf courses, hotels, marinas, and other recreational facilities, whether they are contiguous to the Association Property or not, if they are intended to provide use or benefit to the Members;

- (p) To maintain the Association's official records, which shall be open to inspection by any Member of the Association or their authorized representative at all reasonable times;
- (q) To use its best efforts to obtain and maintain adequate insurance to protect the Association and its Property;
- (r) To furnish annual financial reports if so required by law;
- (s) In the event that the Association may be exposed to liability in excess of its insurance coverage in any legal action, to give notice of the exposure to all Members, who shall have the right to intervene and defend the Association;
- (t) To provide any member, requesting a certificate showing the amount of unpaid assessments or fees respecting such member with a certificate or invoice as requested;
- (u) To pay taxes or assessments levied against the Association Property as required;
- (v) To pay costs of utility services rendered to the Association Property not billed directly to individual Members;
- (w) To impose fines on Members in such sums as it may deem appropriate, for violations of the Articles of Incorporation, these Bylaws and lawfully adopted Rules and Regulations, by Members, or their tenants. The Board, at its discretion, may collect those fines in one (1) or more installments according to the following provisions: (i) Each day of violation shall be deemed as a separate violation; (ii) No fine shall be imposed until the offending party (which always shall include the member) has been given written notice of the violation and has had an opportunity to appear and be heard before a committee designated by the Board; (iii) If the committee does not agree with the fine, the fine may not be levied; and (iv) For continuing violations, only a single notice and opportunity for hearing shall be required.
- (x) To deny use privileges of the Association's Property to Members who are delinquent in the payment of any assessments levied by the Association's Board; and
- (y) To repair and reconstruct improvements to the Association's Property after casualties.

Section 4. Disqualification and Resignation of Directors: Any director may resign at any time from the Association's Board by sending written notice of such resignation to the Secretary

of the Association. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof by the Secretary.

Section 5. Meetings of the Board of Directors: Regular meetings of the Board of Directors shall be held annually or as otherwise determined by the Board. Special meetings of the Board of Directors may be called for by the President at any time and must be called by the President, or the Secretary upon the written request of three (3) directors.

Section 6. Notice of Special Meetings: Written notice of special meetings of the Association's Board of Directors setting forth the time and place of the meetings, shall be given to each director at his last known address no less than ten (10) days prior to the date of such meeting. The notice of such meeting may be given either personally or by sending a copy through the mail or by telex, cable or telegram, charges prepaid, to the address of each director appearing on the books of the Association and shall contain a statement of the business to be transacted thereat. No business other than that specified in the call for the meeting shall be transacted at any such special meetings. Notice of a special meeting may be waived by any director by written waiver or by personal attendance thereat.

Section 7. Notice to Management Company: In the event that the Association retains a management company to manage the Association on its behalf, the management company, or their designee as the case may be, as long as the management agreement remains in effect, shall be entitled to notice of all Director's meetings and attendance at such, and may designate such person(s) as it desires to attend such meetings on its behalf.

Section 8. Quorum: At any meeting of the Association's Board of Directors, a majority of the directors in office shall constitute a quorum for the transaction of business, and the acts of the majority of the directors present at such meetings at which a quorum is present, shall be deemed the acts of the Board. However, if at any meeting of the Board, there is less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum shall be present or represented. At each such adjourned meeting, any business which might have been transacted at the meeting, as originally called, may be transacted without further notice.

Section 9. Voting: The affirmative vote of a majority of the directors present at any meeting of the Board of Directors at which quorum is present shall constitute the act of the Board.

Section 10. Informal Action: Any action which may be taken at any meeting of directors may be taken without a meeting if a consent in writing setting forth the action shall be signed by all of the directors entitled to vote on the action and shall be filed with the Secretary of the Association. This consent shall have the same effect as a unanimous vote at any directors meeting.

Section 11. Vacancies of Directorate: Vacancies in the Board of Directors occurring between annual meetings of the members shall be filled for the unexpired portion of the term by two-thirds (2/3) vote of the remaining directors, even though the directors present may constitute

less than a quorum.

In the event that the office of an director(s) becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, a super majority of the remaining directors, though less than a quorum, at any regular or special meeting of the Board shall choose a successor or successors, who shall hold office for the balance of the unexpired term.

Section 12. Removal of Directors: Any director may be removed, either with or without cause at any time by a vote of the majority of the Members of the Association at any meeting called for such purpose.

## ARTICLE V

### OFFICERS

Section 1. Officers: The principal officers of the Association shall be composed of a President, one (1) or more Vice President, a Treasurer and a Secretary, and shall be elected from among the directors of the Board. The Board of Directors may elect such other officers, including an Assistant Secretary and Assistant Treasurer, and appoint such agents and employees as they shall deem advisable in their sole discretion, which shall be subject to recall at all times by a majority vote of the Board of Directors. Any two offices (but not more than two), other than the offices of President and Secretary, may be held by the same person.

Section 2. Election of Officers: The officers of the Association shall be elected annually by the Association's Board of Directors at its meeting held immediately after the annual meeting of Members and shall hold office for one (1) year and until their successors have been duly elected and qualified.

Section 3. Appointed Officers: The Association's Board may appoint Assistant Secretaries, Treasurers, and such other officers as the Board deems necessary.

Section 4. Removal of Officers: Any officer may be removed, with or without cause, and a successor elected, by a majority vote of the Board of Directors, regularly convened at a regular or special meeting.

Section 5. Term: The officers of the Association shall hold office until their successors are chosen and qualify in their stead.

Section 6. President: The President shall be the chief executive officer of the Association; shall preside at all meetings of the Members and of the Board; shall have executive powers and general charge and supervision of the business affairs and property of the Association, subject to direction of the Board of Directors, and shall have general supervision over its officers and agents. Additionally, the President shall sign all written contracts to perform all of the duties incidental to the office of the President and which may be delegated to the

President from time to time by the Board and shall, if present, preside at all the meetings of Members and may perform all acts incident to the office of President of the Association.

Section 7. Vice President: In the absence of or inability of the President to act, the Vice President shall perform the duties and exercise the powers of the President and shall perform such other functions as the Association's Board of Directors or the President of the Association may from time to time prescribe.

Section 8. Secretary: The Secretary shall issue notices of all Association Board meetings and all meetings of the Members, shall attend and keep minutes of same; have charge of all of the Association's books, records and papers, except those kept by the Treasurer or by the management company, as permitted. The Assistant Secretary shall perform the duties of the Secretary when the Secretary is absent, and such other duties assigned by the Secretary. The duties of the Secretary may be fulfilled by a management company engaged by the Association and the management company may maintain and have custody of such books and records of the Association as the Association determines in its sole discretion.

Section 9. Treasurer:

- (a) The Treasurer shall have the care and custody of and be responsible for all of the Association's funds and securities, except those funds payable to the management company, and keep full and accurate accounts of receipts and disbursements in books belonging to the Association, establishing a "Maintenance Fund" for the deposit of such funds in the name and to the credit of the Association in such a bank or other federally insured financial institution as the directors may designate from time to time.
- (b) The Treasurer shall disburse the funds of the Association as may be ordered by the Board in accordance with these Bylaws, making proper vouchers for disbursements, and shall render to the President and the Board at the regular meetings of the Board, or whenever they may require, an accounting of all transactions as the Treasurer and of the financial condition of the Association.
- (c) The Treasurer shall collect the assessments and related Fees from Members on behalf of the Association and shall promptly report the status of collections and of all delinquencies to the Board.
- (d) The Treasurer shall give status reports to potential transferees on which reports the transferees may rely.
- (e) The Treasurer shall exhibit at all reasonable times the books and accounts to any director or, upon written request therefore, to any Member and shall render a statement of the condition of the general finances of the Association at each stated meeting of the Board of Directors and a full report at the annual meeting of Members if called upon to do so.

- (f) The duties of the Treasurer may be fulfilled by a management company engaged by the Association, and said management company may maintain and have custody of such books as the Association determines, in its sole discretion.

Section 10. Delegation of Officers Duties: In case of the absence of any officer of the Association, or for any reason the Board may deem sufficient, the Board may, except as otherwise provided in these Bylaws, delegate the powers or duties of such officers to any other officer, any director, or management company under contract with the Association for the time being, provided a majority of the entire Board concur therein.

Section 11. Vacancies: Should any vacancy occur by death, resignation or otherwise, the same shall be filled, without undue delay, by the Board of Directors at its next regular meeting or at a special meeting called for that purpose.

Section 12. Bank Accounts and Expenditures: All disbursements of funds from any Association account, including any maintenance funds of the Association, shall require the signatures of two (2) officers, or by the management company if a management company has been retained by the Board to manage the Association and all expenditures in excess of \$20,000.00 of unbudgeted funds at any one time shall require the prior approval of the Board of Directors.

## **ARTICLE VI**

### **COMMITTEES**

Section 1. Committees to perform such tasks and to serve for such periods as may be designated by resolution adopted by a majority of the directors present at a meeting at which such powers as may be provided in the resolution. Each committee shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee of with rules adopted by the Board.

## **ARTICLE VII**

### **COMPENSATION OF DIRECTORS & OFFICERS**

The directors and the officers of the Association shall receive no compensation for their duties as such. The Board of Directors may, however, by majority vote thereof, reimburse any director and any officer for actual expenses incurred by such director or officer on behalf of the Association.



**ARTICLE VIII**

**AMENDMENTS**

These Bylaws may be amended by the Members of the Association at any regular or special meeting duly called for that purpose by the affirmative vote of two-thirds of the votes of all the Members of the Association entitled to vote thereon. Notwithstanding the foregoing, those provisions of these Bylaws which are governed by the Declarations or by Virgin Islands law may not be amended, repealed or altered except as provided in said Declarations or by applicable law.

**ARTICLE IX**

**ADDITIONS OR ALTERATIONS**

There shall be no additions or alterations to the elements of the Association's Property, except as specifically provided for in these Bylaws or as approved by the Association's Board.

**ARTICLE X**

**ASSESMENTS, CHARGES AND COLLECTION**

Section 1. Assessments: Assessments shall be made against the Members at the sole discretion of the Board. The Assessments shall be made in the amount not less than those required to provide funds in advance for payment of all of the anticipated current operating expenses and for all of the unpaid operating expenses previously incurred by the Association.

Section 2. Emergency Assessments: Assessments for expenses relating to emergencies that cannot be paid from the annual assessments shall be made by the Association's Board after thirty (30) days' notice given to the Members. These assessments shall be paid at the times and in the manner as specified by the Board in the notice of assessments issued to Members.

Section 3. Charges: Charges made by the Association against Members other than expenses shall be payable in advance of the service or at the time levied by the Association if there are special charges imposed by the Association. Charges for expenses may be made only after approval of a Member or when expressly provided for in these Bylaws. These charges may include, without limitation, charges for clean-up after the use of Association Property, maintenance services furnished at the expense of an individual Member, and other services furnished solely for the benefit of an individual Member. Special charges shall also include a charge to Members residing in countries other than the United States and Canada, and/or Members who reside in the United States or Canada but who have mailing addresses, telephone numbers or facsimile numbers outside the United States or Canada to offset the additional costs incurred in supporting and communicating with international Members.

Section 4. Liability for Assessments: Each Member holding title to a Suite Interest regardless of how title is acquired, shall be liable for assessments coming due while a Member of the Association. Each Member shall be jointly and severally liable with the previous Member for all unpaid assessments due and payable up to the time of the conveyance of Suite Interest in Condominium. Liability for assessments may not be avoided by abandonment or waiver of the use or enjoyment of any element of the Association property.

Section 5. Liens: As permissible by law, the Association may have a right to file a statutory lien on each Member holding a Suite interest for any unpaid assessments to the Association levied on such Members which may include interest and reasonable attorney's fees incurred by the Association incident to the collection of Assessments and/or collection of such lien levied on a Member.

Section 6. Membership Fees: The Association's Board shall fix and determine, from time to time, the sums necessary and adequate to pay such expenses. When the Board has determined the amount of assessments to be made on behalf of the Association for the year, the Association's Treasurer shall mail or present to each Member a statement of said assessments. The assessment billing function may be delegated to a management company by the Association.

Section 7. Denial of Use Privileges: In the event a Member becomes delinquent in the payment of any assessments levied by the Association's Board or the duly appointed management company, the management company is authorized to deny use of the Association's accommodations, the Lounge and property to such delinquent Member and to any person claiming usage under such delinquent Member to the extent allowed by these Bylaws and in accordance with applicable law.

## ARTICLE XI

### COMPLIANCE AND DEFAULT

Section 1. Violations: In the event a member violates any provision contained in these Bylaws or the Rules and Regulations of the Association, (other than non-payment of assessments) the Association, at the direction of its Board, may notify the member in writing by notice transmitted by mail, of said breach or violation, and if such violation continues for a period of thirty (30) days from date of notice, the Association, through its Board, shall have the right to treat such violation as an intentional, inexcusable and a material breach of the pertinent provisions of the Bylaws or Rules and Regulations, and the Association may then, at its option, have the following recourses:

- (a) File an action, brought either on behalf of the Association or on behalf of the other Members, to recover damages at law;
- (b) File an action in equity to enforce the Member in violation to specific performance; or

- (c) File an action in equity for equitable and/or injunctive relief as may be necessary under the circumstances.

Any violation deemed a hazard to public health by the Board may be corrected immediately as an emergency matter by the Association or management company, as the case may be, and at the cost of the individual Member.

In addition to the Association's right to impose fines as provided in these Bylaws under Article IV and prior to imposing any fines, the Association shall afford the party against whom the fine is sought an opportunity for a hearing after reasonable notice of not less than fourteen (14) days has been given. Such notice shall include:

- (a) A statement of the date, time and place of the hearing;
- (b) A statement of the provisions of the Bylaws or Rules and Regulations which have allegedly been violated; and
- (c) A short and plain statement of the matters asserted by the Association.

Section 2. Negligence or Carelessness: A Member shall be liable for the maintenance, repair or replacement cost of any expense rendered necessary by his or her act, neglect or carelessness, or by that of any member of their family, employee(s), agents or lessees while on Association Property, to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in insurance rates occasioned by use, misuse, occupancy or abandonment of any Suite Interest or its appurtenances. Nothing contained herein, shall be construed to modify any waiver by any insurance company of its rights of subrogation.

Section 3. Costs and Attorneys' Fees: The prevailing party of any proceeding shall be entitled to recover the costs and such reasonable attorneys' fees as may be determined by the Court in any proceeding arising out of an alleged default by a Member.

Section 4. No Waiver: Failure of any Member or the Association to enforce any right, provision, covenant or condition that may be granted by these Bylaws, the Articles of Incorporation or the Rules and Regulations shall not constitute a waiver of the right of the Association or Member to enforce such right, provision, covenant or condition in the future.

Section 5. Remedies: All rights, remedies and privileges granted to Members of the Association, pursuant to any terms, provisions, covenants or conditions of the Association, shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies, or privileges as may be granted to such other party by the Articles of Incorporation, these Bylaws or the Rules and Regulations, at law or in equity.

**ARTICLE XII**

**TRANSFER OF OWNERSHIP**

Section 1 Transfer of Property: A Member shall notify the Association in writing immediately upon any transfer of a Suite Interest in Condominium. Such notice shall be in the form as may be prescribed by the Association from time to time, and shall include, as a minimum, the name and address of the transferee and such other information as required by the Association.

**ARTICLE XIII**

**ROSTER OF OWNERS**

The Association shall maintain a roster of the names and addresses of its membership. Upon request, each member shall file with the Association, a copy of the deed or other instrument evidencing ownership, together with a copy of any other reasonable forms requested to be filed by Members with the Association. The Association shall maintain these documents for reference as required in the exercise of its powers and duties.

**ARTICLE XIV**

**INDEMNIFICATION**

To the extent permitted by applicable law, any director, officer(s), heir(s), executor(s) and administrator(s) made a party to any action, suit or proceeding by reason of the fact that they are or were a director, officer or employee of the Board of this Association shall be indemnified by this Association against all losses, cost, and reasonable expenses, including attorney's fees, actually and necessarily incurred by them in connection with the defense of such action, suit or proceedings, or in connection with any appeal therein, except in relation to matters wherein they may be adjudged in such action, suit or proceeding, to be guilty, or liable of gross negligence or willful misconduct in the performance of their duties. The foregoing rights shall be in addition to and not exclusive of all other rights to which such directors or officer may be entitled. The Association shall procure insurance for these purposes and pay the premiums for same.

**ARTICLE XV**

**TERMINATION OF MEMBERSHIP**

Termination of membership in the Association shall not relieve, release or impair any rights or remedies, which the Association may have against a former Member arising from any liability or obligations in any way connected with the Association during the period of

membership, and the covenants and obligations incidental thereto.

**ARTICLE XVI**

**LIMITATION OF LIABILITY**

Notwithstanding Association's duty to maintain and repair parts of the Association's Property, the Association shall not be liable for injury or damage caused by a latent condition in the condominium, nor for injury or damage caused by the elements or acts of God, by Members or by other persons other than Members.

In the event that Members are held personally liable for acts and omissions of the Association relating to the use of the Association Property, that liability shall be shared by such Member with other Members of the Association.

**ARTICLE XVII**

**PARLIAMENTARY RULES**

Roberts Rules on Order (latest edition) shall govern the conduct of the Association's meetings when not in conflict with U.S. Virgin Island law, or these Bylaws.

**ARTICLE XIII**

**RULES AND REGULATIONS**

The management company or the Association's Board, as the case may be, may adopt or amend previously adopted Rules and Regulations governing and restricting the operation, use, maintenance, management and control of the Association Property and services made available to Members by the Association. A copy of the initial Rules and Regulations are attached hereto as exhibit "A". Subsequent amendments to the Rules and Regulations need not be recorded, but shall be made available upon request by a member, copies of any such amendments shall be forwarded to Members as soon as practicable after being implemented.

**ARTICLE XIX**

**CERTIFICATE OF COMPLIANCE**

A certificate of compliance from a licensed electrical contractor or electrician may be accepted by the Association's Board as evidence of compliance of the Association's Fire and Life Safety Code.

**ARTICLE XX**

**PRIORITIES IN CASE OF CONFLICT**

In the event of conflict between or among the provisions of any of the following, the order of priorities to determine the controlling provision, shall be, from highest priority to lowest:

- (a) The Articles of Incorporation
- (b) These Bylaws
- (c) The Rules and Regulations

To the extent that the Virgin Islands Code requires certain provisions to be included in the Bylaws of an association, and if these Bylaws do not include such provisions, they shall be deemed to so include them.

**ARTICLE XXI**

**CURATIVE PROVISIONS OF DEFECTIVE DOCUMENTS**

The Association or a member may petition the court having jurisdiction in which the Association Property is situated to correct an error or omission in any documents required to establish the Association, affecting its valid existence, and which errors or omissions are not correctable by the amendment procedures in the Articles of Incorporation.

**ARTICLE XXII**

**COMPLAINTS**

In the event a member files a written complaint by certified mail with the Association's Board, the Board shall respond in writing to the member within thirty (30) days of receipt of said complaint. The Board's response shall either (i) give a substantive response to the complaint filed by the member, (ii) notify the member that a legal opinion regarding the complaint has been requested, or (iii) notify the member that advice has been requested from the appropriate governmental entity regarding the complaint. If the Board requests advice from a governmental entity regarding said complaint, the Board shall, within ten (10) days of receipt of the advice regarding said complaint, provide a substantive response to the member in writing. If a legal opinion is requested by the Board to answer the complaint, the Board shall, within sixty (60) days after the receipt of the legal opinion to the complaint, provide in writing a substantive response to the member.

**ARTICLE XXIII**


**CONSTRUCTION**

Whenever the context of these Bylaws permits or requires, the singular shall include the plural, the plural shall include the singular and the use of any gender shall be deemed to include all genders.

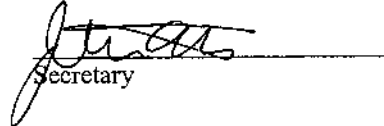
**[SIGNATURE PAGE TO FOLLOW]**

The foregoing Bylaws were adopted at the first meeting of the Board of The Neighborhood Association, Inc.

**APPROVED**



\_\_\_\_\_  
President



\_\_\_\_\_  
Secretary

V:\ORL535-Legal\Legal Shared\RCC-St. Thomas\RCC-St. Thomas II (Conversion of 24 Hotel Units)\Virgin Islands\Bylaws-Neighborhood Assoc\ST THOMAS BYLAWS 5.18.05.doc



# **EXHIBIT 9**

05/31/2002 12:52:29 PM  
Filed & Recorded in  
Official Records of  
ST THOMAS/ST JOHN  
WILMA D. HART SMITH  
RECORDER OF DEEDS

GREAT BAY CONDOMINIUM  
LEGAL DOCUMENTATION

DECLARATION

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05/31/2002 12:52:29 PM  
Filed & Recorded in  
Official Records of  
ST THOMAS/ST JOHN  
MILNA D. HART SMITH  
RECORDER OF DEEDS

DECLARATION ESTABLISHING A PLAN FOR CONDOMINIUM  
OWNERSHIP OF PARCEL NOS. 4-2 and 4-3  
ESTATE NAZARETH, NO. 1 RED HOOK QUARTER,  
ST. THOMAS, UNITED STATES VIRGIN ISLANDS,  
PURSUANT TO CHAPTER 33, TITLE 28 OF  
THE VIRGIN ISLANDS CODE

RC HOTELS (VIRGIN ISLANDS), INC., a corporation organized and existing under the laws of the US Virgin Islands, whose principal office is situated at Parcel No. 6 Estate Nazareth, St. Thomas, Virgin Islands, hereinafter referred to as the "Declarant", does hereby declare:

1. SUBMISSION OF PROPERTY. The Declarant hereby submits the land hereinafter described, together with the Building and improvements thereon erected and to be erected, owned by the Declarant in fee simple absolute (hereinafter called the "Property"), to the provisions of Chapter 33, Title 28, Virgin Islands Code, known also as the "Condominium Act of the Virgin Islands":

Parcel Nos. 4-2 and 4-3 Estate Nazareth  
No. 1 Red Hook Quarter  
St. Thomas, Virgin Islands  
As shown on OLG NO. 49-580-1002  
containing approximately 2.498 acres and 0.456 acres  
respectively, more or less hereinafter collectively referred to as the  
"Parcel".

The following easements are hereby expressly reserved or are hereby granted:

(a) General Easements. Non-exclusive easements over, across and under the Property are expressly provided for and reserved in favor of the Declarant and the Members, and their respective lessees, guests and invitees, as follows:

(1) Utilities. Easements are reserved over, across and under the Property as may be required for Utility Services in order to adequately serve the Condominium or properties located adjacent to the Condominium which are owned or operated by Declarant (or any successors or assigns of the Declarant) or an affiliate of Declarant, including, but not limited to, easements for the purpose of allowing such

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access rights as are necessary to utilize and service any lift station or utility transformer boxes located within the Property.

(2) Encroachments. In the event that for any reason, a Residence shall encroach upon any portion of any of the Common Elements or upon any other Residence, or in the event any Common Element shall encroach upon any Residence, then an easement shall exist to permit such encroachment so long as the same shall exist.

(3) Traffic. An easement shall exist for pedestrian traffic over, through and across sidewalks, paths, walks, halls, lobbies, and/or other portions of the Common Elements as may be from time to time intended and designated for such purpose and use, for vehicular and pedestrian traffic over, through and across such portions of the Common Elements as may from time to time be paved and intended for such purposes, and for vehicular parking on such portions of the Common Elements as may from time to time be paved, intended and designated for such purposes. The aforescribed easements shall be for the use and benefit of the Members within this Condominium and the Declarant, and those claiming by, through or under the aforesaid; provided, however, that nothing herein shall be construed to give or create in any person the right to park any vehicle upon any portion of the Property, except to the extent that space may be specifically designated and assigned for parking purposes. In addition, further easements shall exist for ingress and egress over such streets, walks and other rights of way serving the Residences as shall be necessary to provide for reasonable access to the public ways.

(b) Members Association Easements. Except as limited by Chapter 33 of Title 28, Virgin Islands Code, the Members Association may grant easements from time to time over the Common Elements.

(c) Declarant Easements. The Declarant hereby reserves the following exclusive easements and rights to grant easements:

(1) Marketing, Sales and Rental. The Declarant for itself, its agents, successors and assigns reserves exclusive easement rights over and across the Property for the purpose of marketing, sales and rental of Residences and/or any interests created therein ("Residence Interests") at this Condominium and/or at other locations at which Declarant has developed or is developing, marketing and/or selling similar interests and for the purpose of leasing any Residences or Units that have either been or not been declared as part of this Condominium. Lessees of Declarant-owned or -affiliated non-declared Units shall have, for the length of the term of their leases, the same easement rights over and across the Property and use rights to the Common Elements of the Condominium as are reserved for Members of declared Residences.

(2) Governmental Requirements. The Declarant hereby reserves the right to grant such easements, from time to time, as may be required by any government, quasi-government or private agency. Such easements shall specifically

include, but not be limited to, any environmental easements required by federal or U.S.V.I. environmental agencies, for so long as the Declarant holds any interest in any Residence subject to this Declaration.

(3) Declarant Easements. The Declarant reserves unto itself, for so long as it holds any interest in any Residence or other property located adjacent to or near the Property, specific easement rights over and across the Property as it may deem necessary for its use from time to time.

(4) Construction Easements. The Declarant hereby reserves easement rights over, under and across the Property as is necessary, from time to time, for the purpose of constructing improvements on the Property or properties located adjacent to or near the Property.

(d) Other Easements. The Property is also subject to other easements that have been granted over the Property as previously recorded in the Public Records of St. Thomas, U.S. Virgin Islands.

2. AREA OF LAND. The Parcel has an area of approximately 2.954 acres.

3. BUILDING(S). The Condominium will consist of TWENTY THREE (23) condominium residential apartment units (hereinafter the "Residences") in one (1) building (the "Building") identified as Building A. It is the intent of the Declarant to build additional Residences in additional building(s) on property adjacent to the Property for later submission to and amendment of this Declaration of Condominium. Phase 1 of the Condominium consists of said TWENTY THREE (23) Residences in one (1) building identified as Building A. The Building is six (6) stories and constructed of reinforced concrete walls with steel deck floor slabs, galvanized roofs and interior sheet rock or concrete walls. The number of Residences and Stories in each Building in the Condominium following completion of all phases is estimated to be as follows:

Building	Number of Residences	Number of Stories
A	23	6
B	19	5
C	19	5
D	19	4
Approximate Total	<u>80</u>	

4. NAME OF CONDOMINIUM. This Condominium shall be known as "GREAT BAY CONDOMINIUM".

5. THE UNITS ("RESIDENCES").

(a) Exhibits. A list of all Residences in Building A which is Phase I of the Condominium, their location, identification numbers for each Residence, approximate areas, and number of rooms are shown on the floor plans of Building A, certified by Brian Mosely & Associates, Inc., attached hereto as Exhibit A. The Common Elements and Limited Common Elements to which each Residence has access is as shown on the floor plans for such Residence attached to **Exhibit "A."** As the Declarant adds phases to the Condominium, the Declarant shall from time to time amend the exhibits to this Declaration so as to disclose the foregoing information for the additional phases, until all phases (approximately no more than 85 Residences) have been added and made subject to the Declaration.

(b) Description of Residences. Each Residence shall include that part of a building containing the Residence that lies within the boundaries of the Residence, which boundaries are as follows:

(1) Upper and Lower Boundaries. The upper and lower boundaries of the Residence shall be the following boundaries extended to an intersection with the perimeter boundaries:

(i) Upper Boundaries. The imaginary horizontal plane through the highest point of the interior unfinished lower surface of the ceiling of the Residence.

(ii) Lower Boundaries. The imaginary horizontal plane through the lowest point of the interior unfinished upper surface of the floor of the Residence.

(c) Perimeter Boundaries. The perimeter boundaries of the Residence shall be the imaginary vertical planes along and coincident with the interior unfinished surfaces of perimeter walls, or where no wall exists, an imaginary vertical plane along and coincident with the sides of the perimeter of such Residence. Areas within a Residence containing conduits, wiring, ducts, plumbing, bearing walls, structural supports, and other such items, together with the contents therein, regardless of location, constitute parts of the Common Elements to the exterior undecorated finished surface of said areas.

(d) Notwithstanding anything contained in this Article 5 to the contrary, upon the filing of a Club Declaration (as defined in Section 10 (a)(1)(i)) as described in Article 10 hereof, the Members Association shall have the right exercisable at any time and from time to time, to install, as a Common Expense to Residences submitted to the Club Declaration, such decorations, fixtures and coverings (including, without limitation, painting, finishing, wall papering, carpeting, pictures, mirrors, shelving and lighting fixtures) on the surfaces of the interior walls, ceilings and floors of

one or more Residences provided that no such installation shall impair the structural integrity of any Residence or of the Building. No owner of a Residence (hereinafter "Owner" or "Member") shall have the right to install decorations, fixtures and coverings (including, without limitation, painting, finishing, wall papering, carpeting, pictures, mirrors, shelving and lighting fixtures) on the surfaces of the walls, ceilings and floors that face the interior of such Residence. The Members Association shall be responsible for maintaining furnishings, decorations, fixtures and coverings (including, without limitation, painting, finishing, wall papering, carpeting, pictures, mirrors, shelving and lighting fixtures) on the surfaces of the walls, ceilings and floors that face the interior of each Residence submitted to the Club Declaration, provided that no such installation shall impair the structural integrity of such Residence or of the Building.

(e) Each Residence includes the balcony/terrace, if any, appurtenant to such Residence.

(f) With respect to adding future phases to the Condominium, each Member hereby appoints the Declarant as such Member's attorney-in-fact, which appointment, coupled with an interest, is irrevocable, to increase the common areas and number of Residences in the Condominium and to change the percentage of ownership interest, to change the number and configuration of rooms within a Residence, and to amend the exhibits hereto accordingly to show such changes. Declarant may submit developed property, undeveloped property or commercial property to the Condominium.

6. USE OF RESIDENCES. Each of the Residences shall be used by the Members for residential purposes only and not for any commercial purpose, except for any use made by the Declarant and/or any affiliated or subsidiary companies or designees or agents of Declarant as provided for in the Club Declaration in connection with marketing and sales activities and such other use as shall not unreasonably disturb Members in their use and occupation of the Residences. Declarant may, but shall not be obligated to use any Residence it owns as a lounge for the convenience of the Members. So long as a Residence is used as a lounge, the share of common charges, utilities and upkeep and maintenance attributable to the Residence so used shall be apportioned among the remaining Owners of Residences in accordance with their respective appurtenant interest in the common areas and facilities. The prohibition on commercial use by Members shall include, but not be limited to, a pattern of rental activity or other occupancy or use by a Member that the Members Association, in its reasonable discretion, could conclude constitutes a commercial enterprise or practice. Declarant reserves to itself, its successors and assigns, the sole right to operate commercial facilities at such locations within the common areas as it may designate from time to time as the same may be expanded by the addition of subsequent phases.

(a) No nuisance shall be allowed upon the Property or within a Residence, nor any use or practice that is the source of annoyance to Members or which interferes with the peaceful possession and proper use of the Property by the Members. All parts of the Condominium shall be kept in a clean and sanitary condition, and no



rubbish, refuse or garbage shall be allowed to accumulate nor any fire hazard allowed to exist.

(b) No Member shall permit any use of a Residence or make or permit any use of the Common Elements that will increase the cost of insurance upon the Property. No immoral, improper, offensive or unlawful use shall be made of the Property or a Residence, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies for maintenance, modification or repair of the Property or a Residence shall be the same as the responsibility for the maintenance and repair of the property concerned.

(c) No "For Sale" or "For Rent" signs or other displays or advertising shall be maintained on any part of the Common Elements, Limited Common Elements, or Residences, except that the right is specifically reserved to the Declarant to place and maintain "For Sale" or "For Rent" signs on the Property for as long as it may have Residences or Residence Interests to sell, and except as permitted by the board of directors of the Members Association from time to time.

(d) Bicycles and motorcycles shall not be stored on the Property except in such areas designated for this purpose.

(e) Reasonable rules and regulations concerning the use of Property may be promulgated and amended from time to time by the board of directors of the Members Association in the manner provided by its Articles of Incorporation and Bylaws.

(f) The Declarant may make such use of the Common Elements and the Residences as may facilitate the utilization and sale of Residences and/or Residence Interests in this Condominium and/or developments at other locations, including, but not limited to, showing of the Property and the display of signs and other promotional devices.

(g) All pets are prohibited. No pets of any type are allowed on the Property.

7. COMMON ELEMENTS. The common areas and facilities ("Common Elements") consist of the entire Property except for the Residences, and the Limited Common Elements set forth below, including all other parts of the Building A, and including, without limitation, the following:

- (a) The land on which Building A is erected;
- (b) All roadways, walkways, and parking areas on the Property;
- (c) All roofs, foundations, columns, beams and supports;

(d) All exterior walls of Building A; all walls and partitions separating Residences from steps, stairways, landing platforms, or from other Common Elements; all floors and ceilings;

(e) Pump rooms, meter rooms and other similar facilities; all landscaping, and all exterior lighting;

(f) All central and appurtenant installations for services such as sewerage, power, light and telephone, gas, potable and salt water (including all pipes, ducts, wires, cables, and conduits used in Common Elements or in Residences) and all other mechanical equipment spaces, including (i) the underground and overhead electrical distribution system; (ii) the rainwater and gray water collection system, including cisterns, and the piping and distribution systems; (iii) the sewerage piping system; (iv) the potable water system, including pressure tanks, pumps and piping to Residences; and (v) the sewerage piping system.

(g) All other parts of the Property and all apparatus and installations existing in the buildings or on the Property for common use or necessary or convenient to the existence, maintenance or safety of the Property.

8. LIMITED COMMON AREAS. Limited Common Elements are those Common Elements reserved exclusively for the use of certain Residences served thereby to the exclusion of other Residences as follows:

(a) Entry hallways and passages between Common Elements and walkways to individual Residences, and the personal storage areas assigned further to individual Members.

(b) Any terrace and balcony physically accessible only through the interior of an individual Residence to the exclusion of all others.

9. DETERMINATION OF PERCENTAGE OWNERSHIP ALLOCATION AND ASSESSMENT OF COMMON ELEMENTS. The percentages of ownership of the respective Residences in the Common Elements have been determined upon the basis of the proportion which the value of each Residence bears to the value of the Condominium, and such values and percentages are set forth in Exhibit "B." Inasmuch as the Condominium is being constructed in phases, the percentage of ownership "Percentage Ownership" attributed to a Residence in the Common Elements will diminish as each additional phase of the Condominium is added, and as the value of the Property increases pro tanto. Accordingly, each Member hereby appoints the Declarant such Member's attorney-in-fact, which appointment, coupled with an interest, is irrevocable, to amend Exhibit B from time to time so as to show the changes in each respective percentage share attached to each Residence in the Common Elements. The Declarant, individually and as attorney-in-fact for all of the Owners shall have rights to

amend the Percentage Ownership to the fullest extent under the law and such amendments may be made without any further consent of any Member.

The Members Association shall have a lien against each Residence or Residence Interest, as applicable, for any unpaid assessments and for interest accruing thereon, which lien shall also secure any late charges and reasonable attorneys' fees and costs incurred by the Members Association incident to the collection of such assessment or enforcement of such lien, whether or not legal proceedings are initiated. The lien is effective from and after recording a claim of lien in the Public Records of the U.S. Virgin Islands stating the legal description of the Residence (or Residence Interest, as applicable,) the name of the Member of record, the amount claimed to be due and the due dates. The lien shall continue in effect until all sums secured by the lien shall have been fully paid or until such time as is otherwise permitted by law. Such claims of lien shall be signed and verified by an officer of the Members Association, or by an authorized agent of the Members Association, e.g., officer or designated employee of the manager retained by the Members Association. Upon full payment, the party making payment shall be entitled to a recordable satisfaction of lien, to be prepared and recorded at such party's expense. All such liens shall be subordinate to any mortgage recorded prior to the date of recording the claim of lien, and all such liens may be foreclosed by suit brought in the name of the Members Association in the same manner as a foreclosure of a mortgage on real property, or as otherwise provided by applicable law. The Members Association may also sue to recover a money judgment for unpaid assessments without thereby waiving any claim of lien.

In the event a Mortgagee holding a first priority mortgage shall obtain title to a Residence (or a Residence Interest as applicable) as a result of the foreclosure of such mortgage, or in the event such Mortgagee shall obtain title to a Residence (or Residence Interest as applicable) as the result of a conveyance in lieu of foreclosure of such mortgage, such Mortgagee shall not be liable, except to the extent required under the laws of the U.S. Virgin Islands, for that share of the Common Expenses or assessments chargeable to the Residence (or a Residence Interest, as applicable) or the Member thereof, which became due prior to the acquisition of title by such Mortgagee, and any such unpaid share of Common Expenses or assessments chargeable against any such foreclosed Residence (or a Residence Interest, as applicable) or against any Residence (or a Residence Interest, as applicable) transferred in lieu of foreclosure, shall be deemed a Common Expense to be paid in the same manner as other Common Expenses by all of the Members.

Nothing contained herein shall be construed as a modification of any rights or remedies of the Members Association, except to the extent that the Condominium Documents allow additional remedies to those expressly set forth in The Condominium Act of the Virgin Islands and to the extent that such additional remedies are permitted by law. Each Member of a Residence is personally liable for all assessments made against the Residence pursuant to this Declaration, and the Members Association may bring an action for a money judgment against a delinquent Member to collect all sums due the Members Association, including interest, late charges, costs and

reasonable attorneys' fees. In the event a Residence is owned by more than one person or entity, to the extent permitted by law such Members shall be jointly and severally liable for all assessments made against the Residence. No Member may withhold payment of any regular or special assessment or any portion thereof because of any dispute which may exist between that Member and the Members Association, the directors of the Members Association, the manager retained by the Members Association or the Declarant or among any of them, but rather each Member shall pay all assessments when due pending resolution of any dispute.

Any Member shall have the right to require from the Members Association a certificate showing the amount of unpaid assessments against him with respect to his Residence (or a Residence Interest, as applicable). The holder of a mortgage or other lien shall have the same right as to any Residence (or a Residence Interest, as applicable) upon which it has a lien. Any person who relies upon such certificate shall be protected thereby with respect to any action by the Members Association.

10. MAINTENANCE, ALTERATION AND IMPROVEMENT.  
Responsibility for the maintenance of the Property, and restrictions upon its alteration and improvement, shall be as follows:

(a) Residences.

(1) By the Members Association. Unless caused by the specific abuse of a Member or any licensee, guest or tenant of a Member, the Members Association shall maintain, repair and replace at the Members Association's expense:

(i) Except for the interior of a Residence made subject to a supplemental declaration recorded by Declarant or any of its permitted successors or assigns (hereinafter referred to as "Club Declaration"), the interior of each Residence and all Common Elements and Limited Common Elements except as otherwise provided in the Condominium Documents.

(ii) All conduits, ducts, plumbing, wiring, and other facilities for the furnishing of Utility Services.

(iii) All incidental damage caused to a Residence by reason of maintenance, repair and replacement accomplished pursuant to the provisions of Article 10(a)(i) and (ii) above.

(2) By the Member. The responsibility of the Member for maintenance, repair and replacement shall be as follows:

(i) Except for the interior of a Residence not made subject to the Club Declaration, to paint and otherwise decorate or change the

appearance of any Residence or any portion of the Property without the prior written approval of the Members Association.

(ii) To promptly report to the Members Association any defect or need for repairs for which the Members Association is responsible.

(iii) To bear in their entirety any expenses of repairs or replacements to a Residence or its components, furnishings, carpeting, appliances, or other property, real, personal or mixed, occasioned by the specific use or abuse by any Member or any licensee, guest or tenant of said Member.

(b) Members Association's Access to Residences. The Members Association or the Management Company has the irrevocable right of access to each Residence, whenever necessary, for maintaining the Property or for making emergency repairs necessary to prevent damage to the Common Elements or to another Residence.

(c) Common Elements and Limited Common Elements. The Members Association shall maintain, repair and replace all Common Elements and Limited Common Elements.

(d) Management Company. The Members Association is authorized to contract for management of the Condominium (and the property made subject to the Club Declaration to be recorded, if applicable) [the "Management Agreement"] and to delegate to such contractor (the "Management Company") all powers and duties of the Members Association except such as are specifically required by the Condominium Documents or applicable law to have approval of the board of directors or Members. Notwithstanding any provisions contained in this Declaration to the contrary, it is the intent of this Declaration that the ability of the board of directors of the Members Association to independently terminate the Management Agreement without a vote of the Members shall be governed solely by the terms and conditions of the Management Agreement.

11. ENCROACHMENTS. If any portion of the Common Elements encroaches upon any Residence, or if any Residence now encroaches upon any other Residence, or upon any portion of the Common Elements, as a result of the construction of the Building(s), or if any such encroachment shall occur hereafter as a result of settling or shifting of the Building(s), a valid easement for the encroachment and for the maintenance of the same so long as the Building(s) stand shall exist. In the event the Building(s), the Residence, any adjoining Residence, or any adjoining common area or facility shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then rebuilt, encroachments of parts of the common elements upon any Residence or of any Residence upon any other Residence or upon any portion of the common elements due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the Building(s) shall stand.

12. PIPES, DUCTS, CABLES, WIRES, CONDUITS, PUBLIC UTILITY LINES AND OTHER COMMON FACILITIES LOCATED INSIDE OF RESIDENCES.

Each Owner shall have an easement in common with all other Owners to use all pipes, wires, ducts, cables, conduits, public utility lines and other common facilities located in any of the other Residences and serving his Residence. Each Residence shall be subject to an easement in favor of the Owners of all other Residences to use the pipes, ducts, cables, wires, conduits, public utility lines and other common facilities serving such other Residences located in such Residence.

13. ACQUISITION OF RESIDENCES BY BOARD OF DIRECTORS.

The operations of the Members Association shall be conducted by Great Bay Condominium Association, Inc. a not-for-profit Virgin Islands corporation established by Declarant consisting solely of the Members and Declarant with voting rights therein equal to the respective Residence's percentage interest in the Common Elements as may be adjusted from time to time by the completion and submission of the Phases (hereinafter and hereinafter the "Members Association"). In the event any Member shall in compliance with the terms and conditions of the By-laws surrender his Residence, together with (i) the undivided interest in the Common Elements appurtenant thereto; (ii) the interest of such Member in any other Residences acquired by the Members Association, or the Management Company as its designee on behalf of all Members or the proceeds of the sale or lease thereof, if any; and (iii) the interest of such Member in any other assets of the Condominium (hereinafter collectively called the "Appurtenant Interests"), or in the event the Members Association shall, pursuant to the By-laws, purchase from any Member who has elected to sell the same, a Residence, together with Appurtenant Interests, or in the event the Members Association shall purchase at a foreclosure or other judicial sale, a Residence, together with the Appurtenant Interests, title to any such Residence, together with the Appurtenant Interests, shall be held by the Members Association or the Management Company as its designee, corporate or otherwise, on behalf of all Members, in proportion to their respective Appurtenant Interests. The lease covering any Residence leased to the Members Association, or the Management Company as its designee, corporate or otherwise, shall be held by the Members Association, or the Management Company as its designee, on behalf of all Members, in proportion to their respective Appurtenant Interest.

14. PERSON TO RECEIVE SERVICE.

St. Thomas Registered Agents, Inc  
24-25 Kongens Gade  
Charlotte Amalie, St. Thomas  
Virgin Islands 00802

is hereby designated to receive notice of process in any action which may be brought against the Condominium.

15. RESIDENCES SUBJECT TO DECLARATION. BY-LAWS AND RULES AND REGULATIONS. All present and future Members, tenants and occupants of Residences shall be subject to, and shall comply with the provisions of this Declaration, the By-laws and Rules and Regulations, as they may be amended from time to time. The acceptance of a deed or conveyance or the entering into of a lease or the entering into occupancy of any Residence shall constitute an agreement that the provisions of the Declaration, the By-laws and the Rules and Regulations as they may be amended from time to time, are accepted and ratified by such Member, tenant or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Residence, as though such provisions were recited and stipulated at length in each and every deed or conveyance or lease thereof. No person, irrespective of the nature of his interest, shall bring any action or proceeding for partition or division of the Property or any part thereof except as may be specifically permitted by the Condominium Act of the Virgin Islands, by the provisions hereof or by the By-laws.

16. AMENDMENTS.

(a) By Members. An amendment to this Declaration may be proposed either by the board of directors of the Members Association or a Member. It may be considered at any meeting of the Members, regular or special, of which due notice has been given according to the Bylaws. Passage shall be by the affirmative vote of Members casting not less than fifty-one percent (51%) of the total number of voting interests cast either in person or by proxy at a meeting duly called and held for such purpose. Notwithstanding the foregoing, unless otherwise permitted herein and by the law of the U.S. Virgin Islands, no amendment shall change the configuration or size of any Residence in any material fashion, materially alter or modify the appurtenances to a Residence, nor a Member's proportionate share of the Common Expenses, nor the voting rights appurtenant to any Residence, unless the record Member or Members thereof, and all record Members or Mortgagees or others having placed liens thereon, shall join in the execution of the amendment. No amendment shall be passed which shall impair or prejudice the rights and priorities of any Mortgagees, or change the provisions of this Declaration with respect to Mortgagees, without the written approval of all Mortgagees of record. No amendment shall change the rights and privileges of the Declarant without the Declarant's written approval.

(b) By Declarant. Notwithstanding any provisions of Article 16(a) above to the contrary:

(1) The Declarant reserves the right to change the interior design and arrangement of all Residences and to alter the boundaries between Residences, as long as the Declarant owns the Residences so altered; however, no change shall increase the number of Residences nor alter the boundaries of the Common Elements, except the partywall between any Residences, without amendment of this Declaration in the manner hereinbefore set forth. If the Declarant shall make any changes in Residences, as provided in this Article 16(b)(1), such changes shall be

reflected by the amendment of this Declaration with a survey attached, reflecting any authorized alteration of Residences, and said amendment need only be executed and acknowledged by the Declarant.

(2) The Declarant, so long as it owns more than ten percent (10%) of the Residences, reserves the right, at any time, without notice to or consent of the Members Association, Mortgagees or Members, to amend the Declaration, as may be required by any lending institution or public body, or in such manner as the Declarant may determine to be necessary or desirable, provided such amendment shall not increase the proportion of Common Expenses borne by, nor decrease the Membership of Common Elements by Members other than the Declarant.

(3) The Declarant shall also have the right to make such other amendments as may be reserved elsewhere in this Declaration.

(c) No amendment shall be effective until recorded at the Office of the Recorder of Deeds for St. Thomas and St. John, Charlotte Amalie, St. Thomas, Virgin Islands.

#### 17. PURCHASE OF INSURANCE.

(a) The board of directors of the Members Association shall have the authority to and shall obtain windstorm, fire and extended coverage insurance and vandalism and malicious mischief insurance insuring all of the insurable improvements to the Condominium, together with such other insurance as the Members Association deems necessary in and for the interest of the Members Association, all Members and their Mortgagees, as their interests may appear, in an amount which shall be equal to the maximum insurable replacement value as determined annually; and the premiums for such coverage and other expenses in connection with said insurance shall be assessed against the Members as a Condominium Common Expense. The insured shall be the Members Association, individually and as agent or trustee pursuant to Chapter 33 of Title 28 Virgin Islands Code for the Members, without naming them, and as agent or trustee for their Mortgagees. Notwithstanding the certain types of insurance and amounts of coverage required to be obtained pursuant to this Article, in obtaining insurance the board of directors may consider such factors as availability of and premiums for types of insurance in deciding which type of insurance and the amounts of coverage to obtain.

Provisions shall be made for the issuance of mortgagee endorsements and memoranda of insurance to the Mortgagees. Casualty policies shall provide that payments for losses thereunder by the insurer shall be made to the insurance trustee hereinafter designated, and all policies and endorsements thereon shall be deposited with the insurance trustee. Members may obtain insurance coverage at their own expense upon their own personal property and for their personal liability and living expenses. Insurance policies issued to individual Members shall provide that the coverage afforded by such policies in excess over the amount recoverable under any other policy covering the same property without the rights of subrogation against the Members Association.



(b) Coverage.

(1) Casualty. All buildings and improvements upon the Property, and all Member Association Property that is real property, shall be insured in an amount equal to the maximum insurable replacement value, excluding foundation and excavation costs, and all personal property included in the Common Elements shall be insured for its value. Such coverage shall afford protection against:

(i) Loss of damage by fire and other hazards covered by a standard extended coverage endorsement; and

(ii) Such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the buildings on the Condominium or Members Association Property, including but not limited to vandalism and malicious mischief.

With respect to the coverage provided for by this Article, Members shall be considered additional insureds under the policy.

(2) Public Liability. Public liability insurance shall be obtained in such amounts and with such coverage as shall be required by the board of directors of the Members Association with cross liability and endorsement to cover liabilities of the Members as a group to an Member, and to liabilities of one Member to another Member but such coverage shall not be less than Ten Million U.S. Dollars (\$10,000,000.00) per occurrence and shall contain worldwide jurisdictional coverage for suits brought against the Members Association outside the jurisdiction of the U.S. Virgin Islands.

(3) Insurance on Residences. The board of directors or appropriate officer of the Members Association, shall obtain casualty and liability insurance, as needed, on all Residences whether or not included in the Club Declaration. Each such policy shall reflect the respective interests of the Members Association, and all Owners of each such Residence. Casualty insurance shall be in an amount equal to the replacement cost of the residences and facilities of the Condominium. The premiums shall constitute a Common Expense. All losses thereunder shall be payable to the insurance trustee hereinafter designated. All such proceeds shall be used for the purpose of repair or replacement of any loss, or in the event such loss is not to be repaired or replaced, as determined elsewhere, to be divided among all Members in accordance with their percentage interest in remainder. Any surplus in such proceeds after repair or replacement, shall be divided among all such in accordance with Exhibit B to this Declaration as amended. Deficits shall be treated as Common Expense for such Members.

(4) Such Other Insurance. Other insurance, including, but not limited to, business interruption insurance and a policy of directors' and officers' liability

insurance, shall be obtained as the board of directors or appropriate officer of the Members Association shall determine from time to time desirable.

(c) Premiums. Premiums upon insurance policies purchased by the Members Association shall be paid by the members of the Members Association as a Condominium Common Expense.

(d) Insurance Trustee; Share of Proceeds. All insurance policies purchased by the Members Association shall be for the benefit of the Members and, to the extent permitted under the laws of the U.S. Virgin Islands, their Mortgagees and the Members Association, as their interests may appear. Such policies shall provide that all proceeds covering property losses shall be paid to the insurance trustee, which shall be designated by the board of directors and which may be either (a) any bank or trust company with offices or affiliated offices in both Florida and the U.S. Virgin Islands with trust powers, so long as not prohibited by Chapter 33 of Title 28 Virgin Islands Code, Section 924, (b) the Members Association itself as agent, or (c) any other party including the manager retained by the Members Association, so long as not prohibited by Chapter 33 of Title 28 Virgin Islands Code, Section 924. The insurance trustee shall not be liable for payment of premiums nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purpose elsewhere stated herein and for the benefit of the Members and their Mortgagees in the following shares, but which shares need not be set forth on the records of the insurance trustee:

(1) Common Elements. Proceeds on account of damage to Common Elements – an undivided share for each Member, such share being the same as the undivided share in the Common Elements appurtenant to the Residence.

(2) Residences. Proceeds on account of damage to Residences shall be held in the following undivided shares:

(i) When the Building is to be Restored – For the Members of damaged Residences in proportion to the cost of repairing the damage suffered by each Member, which cost shall be determined by the Members Association.

(ii) When the Building is not to be Restored – An undivided share for each Member, such share being the same as the undivided share in the Common Elements appurtenant to his Residence.

(3) Mortgagees. In the event a Mortgagee endorsement has been issued as to a Residence, whether or not said Residence is subject to the Club Declaration, the share of the Member shall bear a lien for the Mortgagee and the Member as their interests may appear; provided, however, that no Mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no Mortgagee shall have any right to

apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof made to the Member and Mortgagee pursuant to the provisions of this Declaration.

(e) Distribution of Proceeds. Proceeds of insurance policies received by the insurance trustee shall be distributed to or for the benefit of the Members in the following manner:

(1) Expense of the Trust. All expenses of the insurance trustee shall be first paid or provision made therefor.

(2) Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to Members with remittance to Members and their Mortgagees being payable jointly to them. This is a covenant for the benefit of any Mortgagee of a Residence and may be enforced by such Mortgagee.

(3) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the Members, remittances to Members and their Mortgagees being payable jointly to them. This is a covenant for the benefit of any Mortgagee of a Residence and may be enforced by such Mortgagee.

(4) Certificate. In making distribution to Members and their Mortgagees, the insurance trustee may rely upon a certificate of the Members Association made by its President and Secretary as to the names of the Members and their respective shares of the distribution.

(f) Members Association as Agent. The Members Association is hereby irrevocably appointed as the agent for each Member, Mortgagee or other lienholder or Member of any other interest in the Condominium or Members Association Property to adjust all claims arising under insurance policies purchased by the Members Association and to execute and deliver releases upon the payment of claims.

(g) Reconstruction or Repair of Casualty Damage

(1) Determination to Reconstruct or Repair. If any part of the Property shall be damaged by casualty, whether or not it shall be reconstructed or replaced shall be determined in the following manner:

(i) Common Element. If the damaged improvement is a Common Element, the damaged property shall be reconstructed or repaired, unless it is determined in the manner elsewhere provided herein that the Condominium shall be terminated.

(ii) Residences. Reconstruction or repair shall be mandatory for any casualty loss or damage to a building containing Residences occurring within twenty (20) years from the date of recording of this Declaration. Thereafter, reconstruction or repair shall be mandatory, unless the damaged improvement is a building or buildings containing Residences, and if Residences to which more than seventy-five percent (75%) of the Common Elements are appurtenant are found by the board of directors not to be tenantable, then the damaged property will not be reconstructed or repaired and the Condominium will be terminated without agreement as elsewhere provided, unless within one hundred twenty (120) days after the casualty, the Members holding seventy-five percent (75%) or more of the total interest in the Common Elements agree in writing to such reconstruction or repair.

(iii) Certificate. The insurance trustee may rely upon a certificate of the Members Association made by its President and Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

(2) Plans and Specifications. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original building(s); or if not, then according to plans and specifications approved by the board of directors of the Members Association, and if the damaged property is a building or buildings containing Residences having appurtenant to them an interest of not less than seventy-five percent (75%) of the Common Elements, then upon a seventy-five percent (75%) affirmative vote of the members of the Members Association.

(3) Responsibility. If the damage is only to those parts of one Condominium Residence for which the responsibility of maintenance and repair is that of a single Member, then the Member shall be responsible for reconstruction and repair after casualty. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Members Association.

(4) Estimates of Costs. Immediately after a determination is made to rebuild or repair damage to property for which the Members Association has the responsibility of reconstruction and repair, the Members Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

(5) Assessments. The amount by which an award of insurance proceeds to the insurance trustee is reduced on account of a deductible clause in an insurance policy shall be assessed against all Members in proportion to their shares in the Common Elements. If the proceeds of such assessments and of the insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Members Association, or if, at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, special assessments shall be made against the Members. Such special assessments on account of damage shall be a Condominium Common Expense and be made in proportion to the Member's share in the Common Elements.

(6) Construction Funds. The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the insurance trustee and funds collected by the Members Association from assessments against Members, shall be disbursed in payment of such costs in the following manner:

(i) Members Association. If the total assessment made by the Members Association in order to provide funds for payment of costs of reconstruction and repair which is the responsibility of the Members Association is more than \$10,000.00, then the sums paid upon such assessments shall be deposited by the Members Association with the insurance trustee. In all other cases, the Members Association shall hold the sums paid upon such assessments and disburse the same in payment of the costs of reconstruction and repair.

(ii) Insurance Trustee. The proceeds of insurance collected on account of a casualty, and the sums deposited with the insurance trustee by the Members Association from collections of assessments against Members on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

(a) Members Association – Lesser Damage. If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Members Association is less than \$10,000.00, then the construction fund shall be disbursed in payment of such costs upon the order of the Members Association; provided, however, that upon request to the insurance trustee by a Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such funds shall be disbursed in the manner hereafter provided for the reconstruction and repair of major damage.

(b) Members Association – Major Damage. If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Members Association is more than \$10,000.00, then the construction fund shall be disbursed in payment of such costs in the manner required by the board of directors of the Members Association and upon approval of an architect licensed or otherwise fully accredited to practice in the U.S. Virgin Islands and employed by the Members Association to supervise the work.

(c) Surplus. It shall be presumed that the first monies disbursed in payment of costs and reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs established, such balance shall be distributed to the beneficial Member of the fund in the manner elsewhere stated; except, however, that the part of a distribution to a beneficial Member which is not in excess of assessments paid by such Member into the construction fund shall not be made payable to any Mortgagee.

(d) Certificate. The insurance trustee shall not be required to determine whether or not sums paid by Members upon assessments shall be deposited by the Members Association with the insurance trustee, nor to determine whether the disbursements from the construction fund are upon the order of the Members Association or upon approval of an architect or otherwise, nor to determine whether surplus funds to be distributed are less than the assessments paid by Members. Instead, the insurance trustee may rely upon a certificate of the Members Association, made by its President and Secretary, as to any or all such matters.

(g) If all of the Members vote to terminate the Condominium, then the board of directors of the Members Association shall direct the President or Vice President of the Members Association to execute and duly record an instrument terminating the Condominium, or if termination arises as set forth in this Declaration due to destruction or condemnation, the Condominium shall be deemed to be terminated and the Property thereafter owned in common by the Members. The undivided interest in the Property owned in common by each Member shall then become the percentage of the undivided appurtenant interest previously owned by such Member in the Common Elements upon termination of the Condominium.

18. THE MEMBERS ASSOCIATION. The operation of the Condominium shall be by the Members Association, which shall fulfill its functions pursuant to the following provisions:

(a) Membership in Members Association. Membership of each Member in the Members Association shall be acquired and the voting rights relating to such membership shall be pursuant to the provisions of the Articles of Incorporation and Bylaws of the Members Association.

(b) Articles of Incorporation. A copy of the present Articles of Incorporation of the Members Association, which sets forth the Members Association's powers and duties, is available from the Members Association.

(c) Bylaws. A copy of the present Bylaws of the Members Association is attached hereto as "C" and made a part hereof.

(d) Limitation Upon Liability of Members Association. Notwithstanding the duty of the Members Association to maintain and repair portions of the Property, the Members Association shall not be liable to Members for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Members Association, or caused by the Common Elements or other Members or persons.

(e) Restraint upon Assignment of Shares and Assets. Each Member's share in the funds and assets of the Members Association cannot and shall not be

assigned, hypothecated or transferred in any manner except as an appurtenance to his Residence or Residence Interest.

(f) By-laws, Rules and Regulations. The By-laws and Rules and Regulations govern the administration of the Property.

19. PHASED DEVELOPMENT.

(a) Description of Phasing. The Condominium may be developed in phases by Declarant or Declarant's successors and assigns. However, the Declarant, its successors and assigns, are under no obligation to construct or develop any phase other than Phase 1 of the Condominium.

Subsequent phases may consist of additional Residences, commercial premises, parking, Common Elements, or some combination thereof. Currently, it is contemplated that the Condominium will not contain less than a total of eighty (80) Residences although the Declarant, its successors and assigns, may elect to develop more Residences in the future as permitted by applicable law. There shall be no time limit during which the Declarant, its successors and assigns, must complete its phasing plan and the Declarant reserves the right to submit additional phases, if any, to condominium use in any sequence and to assign and transfer all of its rights as Declarant hereunder. There are no assurances that any subsequent phase of the Condominium will be constructed. The documents for a particular phase will be recorded prior to the closing of the purchase of any Residence in that phase. Moreover, the Declarant reserves all rights to vary the phasing plan of the Condominium with respect to phase boundaries, plot plans and floor plans, unit types, unit mixes and unit type mixes, numbers of units, commercial premises, and Common Elements with respect to each subsequent phase whether it is Declarant or its successors or assigns are Declarant.

(b) Impact of Phasing; Change in Membership of Common Elements and Common Surplus and Share of Common Expenses. The impact, if any, which the completion of subsequent phases would have upon prior phases would be to increase the number of Residences and the number of Members. The Common Expense, Common Surplus and Common Element appurtenant interest reallocation caused by the addition of any phase would be set forth in an amended Exhibit "B" to be attached as an amendment to the Declaration at such time as subsequent phases are added and by this reference incorporated herein.

(c) Land. The land which the Declarant currently contemplates may ultimately become part of the Condominium is described in **Exhibit "E"**. The Declarant reserves the right, in its sole discretion, to add land to the Condominium which is not described in the Exhibit and to make changes in the legal description of any proposed phase prior to the addition of that phase to the Condominium.

(d) Recreational Areas and/or Facilities. The Declarant expressly reserves the right to provide recreational areas and/or facilities and to add additional recreational areas and/or facilities in all phases without the consent of Members. More specifically, the Declarant reserves the right, but not the obligation, to provide or add such recreational areas and/or facilities as it determines in its sole discretion by constructing such recreational areas and/or facilities in some or all phases. Any additional recreational areas and/or facilities shall be constructed at Declarant's sole expense, and upon dedication of the phase containing the additional recreational area and/or facility as part of the Condominium, the same shall become Common Elements, with the rights of Members to use the same described in the amendment adding such recreational areas and/or facilities to the Condominium.

(e) Amendment. Phases may be added to this Condominium by the execution of an amendment to this Declaration executed by the Declarant, its successors or assigns only, and such amendment shall not require the execution or consent of any Members other than the Declarant.

## 20. COMPLIANCE AND DEFAULT.

(a) Compliance With Condominium Documents. Each Member shall be governed by and shall comply with the terms of the Condominium Documents and, to the extent applicable, the Membership Program Documents, as the same may be amended from time to time. Failure of a Member to comply with the provisions of such documents shall entitle the Members Association or other Members to pursue any and all legal and equitable remedies for the enforcement of such provisions, including, but not limited to, an action for damages, an action for injunctive relief or an action for declaratory judgment. All provisions of this Declaration shall be enforceable equitable servitudes and shall run with the land and shall be effective until the Condominium is terminated.

(b) Costs and Attorneys' Fees. In any proceeding arising because of an alleged failure of a Member or the Members Association to comply with the terms of the Condominium Documents or, to the extent applicable, the Membership Program Documents, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding, and recover such reasonable attorneys' fees as may be awarded by the Court, including all appeals and all proceedings in bankruptcy.

(c) No Waiver of Rights. The failure of the Members Association or any Member to enforce any covenant, restriction, provision of Chapter 33, the Condominium Documents, or the Membership Program Documents, shall not constitute a waiver of the right to do so thereafter.

(d) Injunctive Relief. The Members Association may seek an injunction from a court of equity to compel compliance with or prohibit violation of the Condominium Documents regardless of whether an adequate remedy at law exists.



(e) Governing Law; Waiver of Jury Trial; Venue of Actions. This Declaration shall be governed by, and shall be construed in accordance with, the laws of the U.S. Virgin Islands. The Members Association, each Member, the Declarant, the Management Company, and any other party claiming rights or obligations by, through, or under this Declaration, each hereby waive any right they may have under any applicable law to a trial by jury with respect to any suit or legal action which may be commenced by or against the others concerning the interpretation, construction, validity, enforcement or performance of this Declaration or any other agreement or instrument executed in connection with this Declaration. In the event any such suit or legal action is commenced by any party, the other parties hereby agree, consent and submit to the personal jurisdiction of the courts of the U.S. Virgin Islands, with respect to such suit or legal action, and each party also hereby consents and submits to and agrees that venue in any such suit or legal action is proper in said court and county, and each party hereby waives any and all personal rights under applicable law or in equity to object to the jurisdiction and venue in said court and county. Such jurisdiction and venue shall be exclusive of any other jurisdiction and venue.

21. INVALIDITY. The invalidity of any provisions of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration and, in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

22. MERGER. This Declaration, the Members Association and the Common Elements of this Condominium described herein may be merged with the declaration of condominium, condominium association and common elements of subsequent phases hereinabove described at the time as such merger is made, or with an independent and separate condominium to form a single condominium. If merger is sought with the association, if any, of subsequent phases(s), then it shall proceed in the sole discretion of the Declarant or with the consent of a majority of the total number of voting interests and with the approval of a majority of the record Members of liens on the Residences (or Residence Interests as applicable). If merger is sought with an independent and separate condominium, then it shall proceed with the consent of a majority of the total number of voting interests and with the approval of seventy-five percent (75%) of the record Members of liens on the Residences (or Residence Interests as applicable). In the event such consent and approval is obtained, a new or amended declaration of condominium, articles of incorporation and bylaws of the Members Association shall be recorded and shall contain such provisions as are necessary to amend and modify the appurtenances to the Residences and the percentages by which the Members share the Condominium Common Expenses (and Club Declaration Common Expenses when applicable), and own the Common Surplus and Common Elements, in order to create a consolidated, single-association regime.

23. CONDEMNATION.

(a) Total Taking by Condemnation. In the event of the taking of all of the real property and improvements thereon of the Condominium by condemnation, the Condominium shall terminate and all awards received by Members shall be deposited with the Members Association, to be aggregated with all award(s) received directly by the Members Association. In the event that any Member fails to deposit his award, the board of directors of the Members Association may, in its discretion, either levy a charge against the non-depositing Member in the amount of his award or set-off the amount of his award against the sums hereafter payable to such Member. All funds which the Members Association receives in connection with such total taking of the real property and improvements thereon of the Condominium, together with all other amounts which the Members Association is then holding, shall be distributed in the same manner as excess insurance proceeds are distributed under Article 17 hereinabove, subject to any right of the Members Association.

(b) Partial Taking by Condemnation. In the event of taking of less than all of the Condominium or Members Association Property by condemnation, the Condominium shall continue and the awards for that taking shall be deposited with the Members Association, even though the awards may be payable to Members. If a Member fails to deposit his award, the board of directors of the Members Association may, in its discretion, either levy a charge against the non-depositing Member in the amount of his award, or set-off the amount of the award against the sums, if any, hereafter payable to that Member. In the event of a taking of less than all of the real property and improvements thereon of the Condominium by condemnation, the size of the Condominium will be reduced, the Members of condemned units will be made whole to the extent of the awards received with respect thereto and charges collected from non-depositing Members, and portion(s) of the Property damaged by the taking will be made usable in the manner provided below.

(c) Members Association as Agent. The Members Association is irrevocably appointed as the agent for each Member, Mortgagee and other holder of a lien upon a Residence (or Residence Interest as applicable, and for each Member of any other interest in the Condominium, to represent them in any condemnation proceeding with respect to the Condominium or Members Association Property, and to negotiate and settle all of their claims in such proceeding. Any funds received by the Members Association as agent for the Members, shall be held in escrow and distributed in accordance with this Article.

(d) Residence Reduced but Tenatable. If the taking reduces the size of a Residence and the remaining portion of the Residence can be made fully habitable, the award for the taking of a portion of the Residence shall be used for the following purposes in the order stated and the following changes shall be effected in the Condominium:

(1) Restoration of Residence. The Residence shall be made habitable as described above. If the cost of the restoration exceeds the amount of the award received and charges levied, the Members Association shall obtain the additional funds required by levying a special assessment against all Members.

(2) Distribution of Surplus. The balance of the award, if any, after restoration shall be distributed to the Member(s) and to the Mortgagees having an interest (and in accordance with such interest) in the Residence, the remittance being made payable to the Mortgagees to the extent of the amount outstanding (principal, interest and other costs and expenses secured thereby) under its respective mortgages (as certified by each Mortgagee to the Members Association).

(e) Residence Made Uninhabitable. If the taking is of the entire Residence or Residences or so reduces the size of a that they cannot be made tenantable, the award for the taking of the Residence or Residences shall be used for the following purposes in the order stated and the following changes shall be effected in the Condominium:

(1) Payment of Award. The lesser of (a) the market value of each such Residence immediately prior to the taking of the Residence, or (b) the total of the awards received plus charges levied with respect to such Residence, shall be paid to the Member or Members and to each Mortgagee having an interest in the Residence in proportion to their respective interests, the remittance being made payable to the Mortgagee or Mortgagees to the extent of the amount outstanding (principal, interest and other costs and expenses secured thereby) under its mortgage (as certified by each Mortgagee to the Members Association).

(2) Addition to Common Elements. The remaining portion of the Residence or Residences, if any, shall become a part of the Common Elements and shall be placed in condition for use by all of the Members in the manner approved by the board of directors of the Members Association; provided that if the cost of the work shall exceed the balance, if any, of the funds received by the Members Association as a result of the taking, the work shall be approved in the manner elsewhere required for further improvement of the Common Elements.

(3) Adjustment of Shares in Common Elements. The share in the Common Elements appurtenant to those Residences that continue as part of the Condominium shall be adjusted to distribute the shares in the Common Elements appurtenant to the Residence(s) which are no longer Residences as a result of the taking among the reduced number of Members. This shall be done by restating the shares in the Common Elements of continuing Members in accordance with the relative values of each Member's respective Residence bears to all the remaining Residences.

(4) Assessments. If the amount of the award for the taking is not sufficient to pay the amount set forth in Article 23(e)(1) hereinabove and to place the remaining portion of the Residence in condition for use as a part of the Common

Elements, the additional funds required for those purposes shall be raised by a special assessment levied by the Members Association against all of the Members who will continue as Members after the changes in the Condominium effected by the taking. The special assessments shall be made in proportion to the shares in the Common Elements of those Members after the changes effected by the taking.

(5) Arbitration. If the market value of a Residence prior to the taking cannot be determined by agreement between the Member or Members and Mortgagee or Mortgagees having an interest in the Residence and the Members Association within thirty (30) days after notice by either party, the value shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Residence; and a judgment of specific performance upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction. The cost of arbitration proceedings shall be assessed against all Members in proportion to the shares in the Common Elements of the Members as they existed prior to the changes effected by the taking.

(f) Taking of Common Elements. Awards for the taking of Common Elements shall be used to make the remaining portion of the Common Elements usable in the manner approved by the board of directors of the Members Association; provided, that if the cost of the work shall exceed the balance of the funds from the awards for the taking and any charges levied with respect thereto, the work shall be approved in the manner elsewhere required for further improvement of the Common Elements. The balance of the awards for the taking of Common Elements, if any, may be distributed to the Members in the shares in which they own the Common Elements after adjustment of these shares on account of the condemnation or retained by the Members Association. If the Members Association decides to distribute the balance and if there is a mortgage of a Member's interest in a Residence, the distribution shall be made to the Mortgagee or Mortgagees to the extent of the amount outstanding (principal, interest and other costs and expenses secured thereby) under its mortgage (as certified by each such Mortgagee to the Members Association).

(g) Amendment of Declaration. The changes in Residences, in the Common Elements and in the shares of the Common Elements that are affected by condemnation shall be evidenced by an amendment to this Declaration that need be approved only by a majority of all directors of the Members Association.

24. WAIVER. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

25. 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 Declaration nor the intent of any provision hereof.

26. GENDER. The use of the masculine gender in this Declaration shall be deemed to refer to the feminine gender and the use of the singular shall be deemed to refer to the plural, and vice versa, whenever the context so requires.

IN WITNESS WHEREOF, RC HOTELS (VIRGIN ISLANDS), INC., the Declarant, has caused this Declaration to be executed by its duly authorized officer this day of May 10, 2002.

WITNESSES:  
Shelly Freeman

RC HOTELS (VIRGIN ISLANDS), INC.

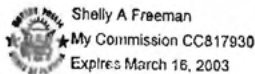
By: The Ritz-Carlton Club, St. Thomas, Inc., a Virgin Islands corporation  
By: Joseph D. Scalo, Vice President  
Attorney-in-Fact pursuant to Power of Attorney dated April 29, 2002 and Recorded on \_\_\_\_\_ as Document No. \_\_\_\_\_

Celeste C. Cummings

STATE OF Florida )  
COUNTY OF Orange ) ss:

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of

2002, by Joseph D. Scalo, as (Vice) President of The Ritz-Carlton Club, St. Thomas, Inc., a Virgin Islands corporation, on behalf of RC Hotels (Virgin Islands), Inc. a Virgin Islands corporation.



Shelly A. Freeman  
Notary Public

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**EXHIBIT A**

**FLOOR PLANS**

05/31/2002 12:52:29 PM  
 Filed & Recorded in  
 Official Records of  
 ST THOMAS/ST JOHN  
 WILMA O. HART SMITH  
 RECORDER OF DEEDS

EXHIBIT "B"  
 PERCENTAGE OWNERSHIP ALLOCATION  
 IN THE COMMON ELEMENTS AND FOR VOTING PURPOSES

<u>UNIT NO.</u>	<u>UNIT TYPE</u>	<u>VALUE</u>	<u>% INTEREST</u>	<u>VOTES</u>
1101	2br	\$ 1,341,450.00	4.187700%	604.872
1102	2br	\$ 1,341,450.00	4.187700%	604.872
1103	2br	\$ 1,341,450.00	4.187700%	604.872
1201	2br	\$ 1,341,450.00	4.187700%	604.872
1202	2br	\$ 1,341,450.00	4.187700%	604.872
1203	3br	\$ 1,577,400.00	4.924280%	711.264
1204	2br	\$ 1,341,450.00	4.187700%	604.872
1301	2br	\$ 1,341,450.00	4.187700%	604.872
1302	2br	\$ 1,341,450.00	4.187700%	604.872
1303	3br	\$ 1,577,400.00	4.924280%	711.264
1304	2br	\$ 1,341,450.00	4.187700%	604.872
1401	2br	\$ 1,341,450.00	4.187700%	604.872
1402	2br	\$ 1,341,450.00	4.187700%	604.872
1403	3br	\$ 1,577,400.00	4.924280%	711.264
1404	2br	\$ 1,341,450.00	4.187700%	604.872
1501	2br	\$ 1,341,450.00	4.187700%	604.872
1502	2br	\$ 1,341,450.00	4.187700%	604.872
1503	3br	\$ 1,577,400.00	4.924280%	711.264
1504	2br	\$ 1,341,450.00	4.187700%	604.872
1601	2br	\$ 1,341,450.00	4.187700%	604.872
1602	2br	\$ 1,341,450.00	4.187700%	604.872
1603	3br	\$ 1,577,400.00	4.924280%	711.264
1604	2br	\$ 1,341,450.00	4.187700%	604.872
<hr/>				
18 Unit 2-Bedroom Allocation		\$ 24,146,100	75.378600%	10,887.696
5 Unit 3 Bedroom Allocation		\$ 7,887,000	24.621400%	3,556.320
23 Unit Allocation		\$ 32,033,100	100.000000%	14,444.016

Doc# 2002062741

**EXHIBIT C**

**BYLAWS**



05/31/2002 12:52:29 PM  
Filed & Recorded in  
Official Records of  
ST THOMAS/ST JOHN  
MILMA O. HART SMITH  
RECORDER OF DEEDS

GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.

BYLAWS

ARTICLE I

NAME AND MEMBERSHIP QUALIFICATIONS

Section 1. Name.

The name of the association shall be Great Bay Condominium Owners Association, Inc. (sometimes hereinafter the "Association") which was created to manage and operate Great Bay Condominium (the "Condominium").

Section 2. Membership Qualifications.

Membership in the Association shall be open only to Owners of Residences as defined in the Declaration of Condominium of Great Bay Condominium (the "Declaration") and Members as defined in the Supplementary Declaration of Great Bay Condominium (the "Supplementary Declaration") both dated May 10, 2002 and both as Recorded at the Office of the Recorder of Deeds for St. Thomas and St. John, Virgin Islands, as amended from time to time (hereinafter collectively, the "Declarations"), located at subdivision(s) of Parcels No. 4 Estate Nazareth, No. 1 Red Hook Quarter, St. Thomas, U. S. Virgin Islands as reflected in the records of Office of the Recorder of Deeds and in contracts of sale on file with the Secretary of the Association. Joint or several membership of one such Residence shall be counted as entitling such owners to one membership and one vote collectively in accordance with the percentage interest expressed in the Declarations, but each such joint owner may attend meetings. Ownership of a parcel by other than a natural person shall be represented by a duly appointed representative.

ARTICLE II

MEETINGS

Section 1. Special Meetings.

Special meetings of Members for any purpose or purposes other than those regulated by statute affecting the interests of the Members may be called by resolution of the Board of Directors or by the President, and must be called by the President at the request in writing signed by Members holding at least sixty-six and two-thirds percent (66-2/3%) of the total appurtenant interest in the common areas and facilities of the Condominium.

Section 2. Notice of Special Meetings.

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Notice of special meetings shall be given by the Secretary or, in the Secretary's absence, any other officer, and shall be served personally or by certified mail, return receipt requested, addressed to each Member at the address appearing on the books of the Association no less than thirty (30) days prior to the date of such meeting. The notice of such meeting shall contain a statement of the business to be transacted thereat. No business other than that specified in the call for the meeting shall be transacted at any such special meeting. Notice of a special meeting may be waived by any Member by written waiver or by personal attendance thereat.

Section 3. Voting.

Members entitled to vote at meetings may do so, in person or by proxy appointed by an instrument in writing subscribed by the Member or by his duly authorized attorney. Each Member shall be entitled to vote the percentage interest in the Residence specified in the Declarations, as amended from time to time.

Section 4. Quorum.

At any meeting of the Members of the Association, except as otherwise provided by the Declarations or by the Articles of Incorporation, the presence, in person or by proxy of Members holding thirty percent (30%) of the percentage interest represented by all of the Residences shall constitute a quorum at an annual or a special meeting. However, a lesser number when not constituting a quorum may adjourn the meeting from time to time until a quorum shall be present or represented.

Section 5. Voting at Members Meetings.

At any meeting of the Members, except as otherwise provided by the Articles of Incorporation, or by the Declarations, a majority of the percentage interests in the Association cast by Members present in person or by proxy shall decide any question brought before such meeting.

Section 6. Informal Action by Members.

Any action which may be taken at any meeting of Members may be taken without a meeting if a consent in writing setting forth the action shall be signed by all of the Members entitled to vote on the action and shall be filed with the Secretary of the Association. This consent shall have the same effect as a unanimous vote at any Members' meeting.

ARTICLE III

BOARD OF DIRECTORS

Section 1. Number.

The affairs of the Association shall be managed by a Board of five (5) directors.

Section 2. Selection.

The initial directors shall be selected and appointed by the Declarant of the Condominium and shall serve until the first annual meeting of Members. At the first annual meeting of Members, the person duly elected by the votes cast at the election held thereat shall become the directors for the ensuing year. At the first election, one director shall be elected for a one year term, two directors shall be elected for a two year term and two directors shall be elected for a three year term. Thereafter, the term of each election shall be as provided in Section 3 below.

Section 3. Term of Office.

The term of office of each of the directors shall be for three years.

Section 4. General Duties and Powers of Directors.

The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not inconsistent with the Declaration, Articles of Incorporation, or Bylaws or directed thereby to be done and exercised exclusively by the Members. These powers and duties include the power to adopt rules and regulations deemed necessary and to impose sanctions for violation thereof, including, without limitation, fines which may be collected as provided in the Declaration and the Articles of Incorporation, and to carry out and perform the other obligations and responsibilities imposed on the Association under the said Declaration.

Section 5. Meetings of the Board of Directors.

Regular meetings of the Board of Directors shall be held annually no less frequently than as the Board may determine. Special meetings of the Board of Directors may be called by the President at any time and must be called by the President, or the Secretary upon the written request of three (3) directors.

Section 6. Notice of Special Meetings.

Written notice of special meetings of the Board of Directors setting forth the time and the place of the meetings, shall be given to each director at his last known address no less than ten (10) days prior to the date of such meeting. The notice of such meeting may be given either personally or by sending a copy through the mail or by telex, cable or telegram, charges prepaid, to the address of each director appearing on the books of the Association and shall contain a statement of the business to be transacted thereat. No business other than that specified in the call for the meeting shall be transacted at any such special meeting. Notice of a special meeting may be waived by any director by written waiver or by personal attendance thereat.

Section 7. Quorum.

At any meeting of the Board of Directors a majority of the directors in office shall constitute a quorum. However, a lesser number when not constituting a quorum may adjourn the meeting from time to time until a quorum shall be present or represented.

Section 8. Voting.

The affirmative vote of a majority of the directors present at any meeting of the Board of Directors at which quorum is present shall constitute the act of the Board.

Section 9. Informal Action.

Any action which may be taken at any meeting of directors may be taken without a meeting if a consent in writing setting forth the action shall be signed by all of the directors entitled to vote on the action and shall be filed with the Secretary. This consent shall have the same effect as a unanimous vote at any directors meeting.

Section 10. Vacancies.

Vacancies in the Board of Directors occurring between annual meetings of the Members shall be filled for the unexpired portion of the term by a majority vote of the remaining directors, even though the directors present may constitute less than a quorum.

Section 11. Removal of Directors.

Any director may be removed, either with or without cause at any time by a vote of the majority of the Members of the Association at any meeting called for such purpose.

ARTICLE IV

OFFICERS

Section 1. Number of Officers.

The officers of the Association shall be a President, one or more Vice Presidents, a Treasurer and a Secretary, and shall be elected from among the directors of the Board. The Board of Directors may elect such other officers, including an Assistant Secretary and Assistant Treasurer, and appoint such agents and employees as in their sole discretion they shall deem advisable, who shall be subject to recall at all times by a majority vote of the Board of Directors. Any two offices (but not more than two), other than the offices of President and Secretary, may be held by the same person.

Section 2. Election of Officers.

The officers of the Association shall be elected annually by the Board of Directors at its meeting held immediately after the annual meeting of Members and shall hold office for one (1) year and until their successors have been duly elected and qualified.

### Section 3. Removal of Officers.

Any officer may be removed, with or without cause, and a successor elected, by a majority vote of the Board of Directors, regularly convened at a regular or special meeting.

### Section 4. President.

The President shall be the chief executive officer of the Association and shall have general charge of the business affairs and property thereof, subject to direction of the Board of Directors, and shall have general supervision over its officers and agents. He shall, if present, preside at all meetings of Members and may do and perform all acts incident to the office of President.

### Section 5. Vice President.

In the absence of or inability of the President to act, the Vice President shall perform the duties and exercise the powers of the President and shall perform such other functions as the Board of Directors may from time to time prescribe.

### Section 6. Secretary.

The Secretary shall keep the minutes of the meetings of the Board of Directors and of the Members in appropriate books; give and serve all notices at all meetings of the Association; be custodian of the records and of the seal of the Association, and affix the latter to such instruments or documents as may be authorized by the Board of Directors; keep the membership books in such a manner as to show at any time the names of the Members alphabetically arranged and their respective places of residence, or their Post Office addresses, and the time at which each person became a Member; and do and perform all other duties incident to the office of Secretary.

### Section 7. Treasurer.

The Treasurer shall have the care and custody of and be responsible for all general funds and securities of the Association and establish a "Maintenance Fund" for the deposit of such funds in the name and to the credit of the Association in such a bank or other federally insured financial institution as the directors may designate; exhibit at all reasonable times his books and accounts to any director or, upon written request therefor, any Member; render a statement of the condition of the general finances of the Association at each stated meeting of the Board of Directors if called upon to do so, and a full report at the annual meeting of Members. He shall keep such books of account as the Board of Directors may require and he shall do and perform all other duties incident to the office of Treasurer.

Section 8. Duties of Officers May Be Delegated.

In the case of the absence of any officer of the Association, or for any reason the Board may deem sufficient, the Board may, except as otherwise provided in these Bylaws, delegate the powers or duties of such officers to any other officer, any director, or management company under contract with the Association for the time being, provided a majority of the entire Board concur therein.

Section 9. Vacancies.

Should any vacancy occur by death, resignation or otherwise, the same shall be filled, without undue delay, by the Board of Directors at its next regular meeting or at a special meeting called for that purpose.

Section 10. Bank Accounts and Expenditures.

All disbursements of funds from any Association account, including the Maintenance Fund, shall require the signatures of two (2) officers, or by the management company if a management company has been retained by the Board to manage the Association, and all expenditures in excess of \$20,000.00 of unbudgeted funds at any one time shall require the prior approval of the Board of Directors.

ARTICLE V

COMMITTEES

Committees to perform such tasks and to serve for such periods as may be designated by resolution adopted by a majority of the directors present at a meeting at which a quorum is present are hereby authorized. Such committee shall perform such duties and have such powers as may be provided in the resolution. Each committee shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board.

ARTICLE VI

COMPENSATION OF DIRECTORS & OFFICERS

The directors and the officers shall receive no compensation for their duties as such. The Board of Directors may, however, by majority vote thereof, reimburse any director and any officer for actual expenses incurred by such director or officer on behalf of the Association.

ARTICLE VII

AMENDMENTS

These Bylaws may be amended by the Members of the Association at any regular or special meeting duly called for that purpose by the affirmative vote of not less than fifty-one percent (51%) of Members of the Association in accordance with their percentage interest assigned in the Declarations. Notwithstanding the foregoing, those provisions of these Bylaws which are governed by the Declarations or by Virgin Islands law may not be amended, repealed or altered except as provided in said Declarations or by applicable law.

ARTICLE VIII

INDEMINIFCATION

Any person made a party to any action, suit or proceeding by reason of the fact that he is or was a director, officer or employee of this Association shall be indemnified by this Association against the reasonable expense, including attorney's fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceedings, or in connection with any appeal therein, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such officer, director or employee is liable for gross negligence or misconduct in the performance of his duties. Such right of indemnification shall not be deemed exclusive of any other rights to which such director, officer or employee may be entitled apart from the provisions of this Article VIII.

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5.10.02.doc

**EXHIBIT D**

**RULES AND REGULATIONS**



## RULES AND REGULATIONS

### GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.

The following rules and regulations, except as otherwise expressly stated, apply to all Members and their families, lessees, employees, agents, invitees and guests with respect to the use of the condominium units of Great Bay Condominium (the "Condominium") and any other portion of the resort. Defined terms not specifically defined in these Rules and Regulations shall have the meaning attached to such terms in the Declaration of Condominium for Great Bay Condominium (the "Declaration of Condominium") and the Supplementary Declaration of Condominium for The Club at Great Bay Condominium (the "Supplementary Declaration"), as supplemented and amended from time to time (collectively, the "Declarations").

#### GENERAL

1. The Condominium is subject to all use restrictions contained in the Declarations.
2. Vehicles using the driveway and parking areas may not exceed a speed of five miles per hour.
3. The balconies, terraces, stairways and windows shall be used only for the purposes intended, and shall not be used for drying or hanging garments, barbecuing, or storing any objects. The sidewalks, driveways and entrances must not be obstructed or encumbered or used for any purpose other than ingress and egress to and from the Residences.
4. Disposition of garbage and trash shall be only by the use of garbage disposal units, by employees or agents of the Club Manager or by the use of sealed trash bags placed in the Association's common trash dumpsters for pick-up by the trash company.
5. The Club Manager may retain a pass key to each Residence within the Condominium.
6. With the exception of specially trained domesticated animals necessary to assist physically challenged people, all other pets and animals are prohibited within the Condominium.
7. No part of the Common Elements may be used for storage, vehicle repair, construction or any other purpose unless specific written permission for such use is given by the Club Manager. If, in the judgment of the Club Manager, any item must be removed from the Common Elements, the owner of said item shall be charged for the cost of such removal.
8. The storage of flammable material that may unreasonably jeopardize the safety and welfare of any person or property is not permitted on or in the Condominium.
9. Owners and their families, guests, invitees, employees and lessees are permitted to park ONLY in areas designated by the Club Manager. No trucks, commercial vehicles, motorized boat, sail boat, or watercraft of any nature, nor trailers or recreational vehicles, may be stored within any Common Elements. Bicycles shall be parked only in areas designated for

bicycle parking. In the event any vehicle is parked in violation of these Rules, such vehicle may be ordered removed or towed, at the Member's expense, at the discretion of the Club Manager.

10. No person shall do or permit anything to be done within the Condominium, or bring or keep anything therein which would conflict with health and safety laws or with any insurance policy of the Association or with any of the rules, regulations or ordinances of any governmental or quasi-governmental authority having jurisdiction over the Condominium.

11. No radios, stereos, speakers or any other apparatus may be used, nor shall any activity be conducted which may reasonably be an annoyance to other Members within any Common Elements.

12. No Member shall make or permit any disturbing noise within his Residence or on the Common Elements by himself, his family, guests, invitees, employees, agents or lessees, nor do or permit to be done anything that does or may interfere with the rights, comforts or convenience of other Members or occupants.

13. No awnings or other projections shall be attached to the outside walls of the Condominium without the prior written consent of the Club Manager.

14. All deliveries and moving of furniture, fixtures, equipment and other items, including personal property, to and from the Residences shall be made by authorized entries and elevators only and shall not cause any unreasonable noise or unreasonable disturbance to the Members or occupants of any other Residence, nor damage to the Common Elements or the Residences.

15. Members shall not place a load on any floor exceeding the floor load per square foot area which the floor was designed to carry and which is allowed by law or which may, in the reasonable opinion of the Club Manager, constitute a hazard to or may damage any Condominium building.

16. Children are to play only in areas either designated or clearly intended for play, and they are not to play in public halls, on stairways, or other common areas which would cause an obstruction. Reasonable supervision by parents or guardians must be exercised at all times when children are playing at the Condominium.

17. Members shall not alter the exterior or unfinished interior of the Residence in any manner. This shall apply to the structural components of the Residences, including walls, floors, ceilings, windows, mechanical systems, HVAC, and fixtures. The Club Manager shall determine the interior color scheme, décor, finishes, appliances, furniture, personal property and overall appearance of each Residence which has been submitted to the Supplementary Declaration, as defined in the Declaration of Condominium, as well as the proper time for redecorating and renovating each such Residence and its contents.

18. Neither Members, occupants or their dependents nor guests shall mark, mar, damage, destroy, deface or engrave any part of the Condominium or improvements. Members

shall be responsible for any such damage. The Members who own Residence Interests shall be responsible for theft or breakage of or damage to the personal property contained within the Residence occupied by them or those deriving use rights through them and shall reimburse the Association for all costs and expenses to repair and/or replace such personal property.

19. Residence occupancy, at any one time, shall be limited to six (6) occupants for private sleeping capacity of a two bedroom Residence and eight (8) occupants for private sleeping capacity of a three bedroom Residence.

20. Members and authorized guests in occupancy of a Residence may use the recreational facilities in a manner consistent with all applicable Residence Documents, inclusive of these Rules and Regulations. All users are required to obey the posted rules. Children under twelve (12) years of age using any swimming pool, whirlpool, and/or other available recreational facilities must be accompanied and supervised by a responsible adult.

Swimming in a pool or using a spa is permitted only during the posted hours of operation. Since the pool and spa are not guarded, persons using these facilities do so at their own risk. Persons using all recreational facilities must be appropriately attired.

Swimming in any area posted "NO SWIMMING" shall be strictly prohibited. Persons using any of the aforementioned facilities do so at their own risk. If any person does not fully understand any posted rules or understand the proper use of the facility, that person shall not use such facility without first receiving instruction and/or direction from an officer of the Association or a representative of the Club Manager.

The following are the basic rules for persons using a swimming pool or whirlpool:

- (a) Shower thoroughly each and every time before entering.
- (b) Pneumatic floats or other items of similar nature, except swimming aids, are not permitted in the pool or spa.
- (c) Pets are forbidden in the general pool and spa areas.
- (d) Running and/or ball playing or throwing objects is not permitted.
- (e) Beverages may be consumed within the pool and spa areas, but extreme care must be taken that absolutely NO GLASS, GLASS BOTTLES or other GLASS CONTAINERS be allowed within the pool and spa areas. Anyone who hosts or participates in serving or consuming beverages will be held strictly responsible for cleaning up after such refreshments have been consumed and will further be held strictly liable for any injury resulting from broken glass.
- (f) If suntan oils, creams or lotions are used, a towel or other form of protection must be placed on pool furniture to protect the attire of others who use the furniture.
- (g) Children under the age of ten (10) will not be allowed in the spa.
- (h) Children must wear appropriate bathing attire at all times including, if necessary, swim diapers or any other protective barrier. Regular diapers are not allowed in the pool.

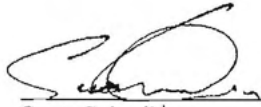
21. Members and guests are not permitted on the roof of any building at the Condominium for any purpose, without the prior written approval of the Association.

22. Check-in time for occupancy of the Residences shall be 4:00 p.m. Atlantic Standard Time and check-out time shall be 11:00 a.m. Atlantic Standard Time.

23. Smoking shall be permitted only in specially designated areas within the Condominium and expressly prohibited in all other areas.

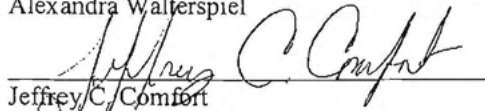
These Rules and Regulations may be executed in counterparts by the Board of Directors of the Association hereto and each shall be considered an original, but all such counterparts shall be construed together and shall constitute the Rules and Regulations of Great Bay Condominium Owners Association, Inc.

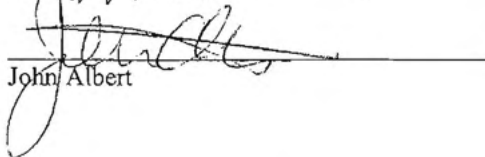
THE ABOVE RULES AND REGULATIONS have been UNANIMOUSLY APPROVED by the Board of Directors of the Association this 10<sup>th</sup> day of May, 2002.

  
\_\_\_\_\_  
Scott Schreiber

  
\_\_\_\_\_  
Chad Jensen

\_\_\_\_\_  
Alexandra Walterspiel

  
\_\_\_\_\_  
Jeffrey C. Comfort

  
\_\_\_\_\_  
John Albert

21. Members and guests are not permitted on the roof of any building at the Condominium for any purpose, without the prior written approval of the Association.

22. Check-in time for occupancy of the Residences shall be 4:00 p.m. Atlantic Standard Time and check-out time shall be 11:00 a.m. Atlantic Standard Time.

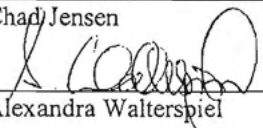
23. Smoking shall be permitted only in specially designated areas within the Condominium and expressly prohibited in all other areas.

These Rules and Regulations may be executed in counterparts by the Board of Directors of the Association hereto and each shall be considered an original, but all such counterparts shall be construed together and shall constitute the Rules and Regulations of Great Bay Condominium Owners Association, Inc.

THE ABOVE RULES AND REGULATIONS have been UNANIMOUSLY APPROVED by the Board of Directors of the Association this 16<sup>th</sup> day of May, 2002.

\_\_\_\_\_  
Scott Schreiber

\_\_\_\_\_  
Chad Jensen

  
\_\_\_\_\_  
Alexandra Walterspiel

\_\_\_\_\_  
Jeffrey C. Comfort

\_\_\_\_\_  
John Albert

**EXHIBIT E**

**CONTEMPLATED EXPANSION LAND**

01/31/2002 12:52:29 PM  
Filed & Recorded in  
Official Records of  
ST THOMAS/ST JOHN  
WILLIAM G. HART SMITH  
RECORDER OF DEEDS

**BGM ENGINEERS & SURVEYORS LLC**  
P.O. BOX 1103 St. John USVI 00831  
tel. 340-776-6770 fax 340-693-7770  
bgmengr@viaccess.net

Page 1 of 2

Remainder Parcel No. 4 (north)  
Estate Nazareth  
No. 1 Red Hook Qtr.  
St. Thomas, USVI

07 January 2002

O.L.G. No. \_\_\_\_\_

Beginning at a pk nail boundpost located on the northwest corner of Parcel 4-3, and the side of Parcel 5-34 and the southwest corner of Remainder Parcel No. 4 the line runs:

North 18 38' 00 " West along Parcel 5-34 a distance of 605.04 feet to an iron pipe boundpost, thence;  
North 67 54' 05 " East along Parcel 5-33 a distance of 731.96 feet to an iron rebar boundpost, thence;  
North 68 29' 25 " East along Parcel No. 6 a distance of 124.95 feet to an iron rebar boundpost, thence;  
North 52 59' 10 " East along Parcel No. 6 a distance of 206.65 feet to an iron rebar boundpost, thence;  
South 18 26' 05 " East along Parcel No. 6 a distance of 61.01' feet to an iron rebar boundpost, thence;  
South 18 26' 05 " East along Parcel No. 6 a distance of 39' feet to an unmarked point on the shore, thence;  
Southerly along the shore a distance of 520' +/- . With a tie line of South 36 54' 30 " West distance of 464.35 feet to a pk nail boundpost, thence;  
South 85 34' 41 " West along Parcel No. 4-2 a distance of 166.70 feet to a pk nail boundpost, thence;  
South 27 44' 37 " West along Parcel No. 4-2 a distance of 115.69 feet to a pk nail boundpost, thence;  
South 09 57' 22 " West along Parcel No. 4-2 a distance of 127.32 feet to a pk nail boundpost, thence;  
South 36 50' 12 " West along Parcel No. 4-2 a distance of 29.35 feet to a pk nail boundpost, thence;  
South 64 55' 04 " West along Parcel No. 4-2 a distance of 27.31 feet to a pk nail boundpost, thence;  
South 84 20' 55 " West along Parcel No. 4-2 a distance of 77.18 feet to a pk nail boundpost, thence;  
South 75 42' 33 " West along Parcel No. 4-2 a distance of 20.09 feet to an unmarked point, thence;

DOC# 2002002741

**A.000304**

South 75 42' 33 " West along Parcel No. 4-4 a distance of 30.66 feet to a pk nail boundpost, thence;  
South 03 34' 41 " East along Parcel No. 4-4 a distance of 123.60 feet to an unmarked point, thence;  
South 17 50' 55 " East along Parcel No. 4-4 a distance of 31.92 feet to a pk nail boundpost, thence;  
South 40 19' 18 " West along Parcel No. 4-3 a distance of 71.60 feet to a pk nail boundpost, thence;  
South 44 00' 15 " West along Parcel No. 4-3 a distance of 33.92 feet to a pk nail boundpost, thence;  
North 38 03' 00 " West along Parcel No. 4-3 a distance of 78.35 feet to a pk nail boundpost, thence;  
South 49 23' 32 " West along Parcel No. 4-3 a distance of 56.79 feet to a pk nail boundpost, thence;  
South 12 04' 19 " West along Parcel 4-3 a distance of 49.59 feet to the point of beginning.

The area is 319,906 square feet or 7.34 acres.

All distances are US feet. The bearings are correlated to A9-358-T88.

B Gregory Miller  
For BGM Engineers & Surveyors LLC



# **EXHIBIT 10**

RECORDED  
OFFICE OF THE  
RECORDER OF DEEDS  
ST. THOMAS, U.S. VIRGIN ISLANDS

**FOURTH AMENDMENT TO  
DECLARATION ESTABLISHING A PLAN FOR CONDOMINIUM  
OWNERSHIP OF PARCEL NOS. 4-2 AND 4-3  
ESTATE NAZARETH, NO. 1 RED HOOK QUARTER,  
ST. THOMAS, U.S. VIRGIN ISLANDS,  
PURSUANT TO CHAPTER 33, TITLE 28 OF  
THE VIRGIN ISLANDS CODE**

Doc# 2005010799

THIS FOURTH AMENDMENT TO DECLARATION is made effective the 15<sup>th</sup> day of October 2005, by RC HOTELS (VIRGIN ISLANDS), INC., a corporation organized and existing under the laws of the U.S. Virgin Islands, whose principal office is situated at Parcel No. 6 Estate Nazareth, St. Thomas, Virgin Islands, hereinafter referred to as the "Declarant":

WHEREAS, by Declaration Establishing a Plan for Condominium Ownership of Parcel Nos. 4-2 and 4-3 Estate Nazareth, No. 1 Red Hook Quarter, St. Thomas, U.S. Virgin Islands, Pursuant to Chapter 33, Title 28 of the Virgin Islands Code made on May 10, 2002, and recorded in the Office of the Recorder of Deeds for St. Thomas and St. John on May 31, 2002, as Document No. 2002002741, as amended by that certain First Amendment recorded on July 5, 2002 in the Office of the Recorder of Deeds for St. Thomas and St. John as Document No. 2002003593 (the "First Amendment"), that certain Second Amendment recorded on December 6, 2002 in the Office of the Recorder of Deeds for St. Thomas and St. John as Document No. 2002006963 (the "Second Amendment") and that certain Third Amendment recorded on January 7, 2004 in the Office of the Recorder of Deeds for St. Thomas and St. John as Document No. 2004000046 (the "Third Amendment") (collectively, together with all corrective instruments and other amendments related thereto, the "Declaration"), the Declarant submitted the land described therein to the provisions of Chapter 33, Title 28, Virgin Islands Code, known also as the "Condominium Act of the Virgin Islands", which condominium is known as Great Bay Condominium;

WHEREAS, Declarant desires to amend the Declaration pursuant to Article 19 thereof in order to submit to the Condominium the land, building and improvements relating to the Phase described herein, containing Building H;

NOW, THEREFORE, pursuant to Article 19 of the Declaration, the Declaration is hereby amended in the following respects only:

1. The Declaration is hereby amended to submit the land described on **Exhibit "A"** attached hereto, together with Building H and related improvements thereon erected, owned by the Declarant in fee simple absolute (hereinafter, separately sometimes referred to as the Phase Five (5) Property, but together with the previously submitted land and improvements, collectively referred to as the "Property"), to the provisions of Chapter 33, Title 28, Virgin Islands Code, known also as the "Condominium Act of the Virgin Islands". The Phase Five (5) Property being submitted to the Declaration is hereby made subject to such reciprocal easements, covenants and restrictions as may be necessary to implement and further the purposes and intent of that certain Reciprocal Easement

Agreement by and between Marriott Hotel Services, Inc., a Delaware corporation and RC Hotels (Virgin Islands), Inc., a Delaware corporation recorded in the Official Records of St. Thomas/St. John as Document Number 2002002739 on May 31, 2002, as such instrument has been amended from time to time and, in particular, to reserve unto Declarant for the benefit of all property owned by Declarant adjacent to and in the vicinity of the Phase Five (5) Property and to grant for the benefit of the Condominium and all Owners of any part thereof, and to and for the benefit of all successors and assigns of the foregoing parties, nonexclusive, perpetual, reciprocal utility and access easements for the use, maintenance, repair and replacement of existing facilities, utilities and other improvements subject to and in accordance with the terms and conditions of, and in all respects as if originally set forth in, the Reciprocal Easement Agreement, over, under and upon the parcels designated as Easement "B-1" and as Easement "A-4" in **Exhibit "D"** attached hereto.

2. Floor Plans of Building H of Phase Five (5) of the Condominium, certified by Brian Moseley and Associates, are set forth in **Exhibit "B"** attached hereto, including the location and identification numbers for each Residence. Building H will contain twelve (12) Residences, is four (4) stories tall and is constructed of concrete masonry and drywall. The twelve (12) Residences located in Building H shall be designated as "Two Bedroom Suites". The occupancy of Two Bedroom Suites, inclusive of children, shall be limited to six (6) people at a time.

3. The schedule set forth in **Exhibit "C"** attached hereto includes a list of all Residences, including the Residences in Building H of Phase Five (5) of the Condominium, approximate areas, number of bedrooms, percentage of ownership and votes of each Residence.

4. **Exhibit "B"**, Percentage Ownership Allocation, of the Declaration is hereby replaced by the attached **Exhibit "C"**.

5. As contemplated by Section 19 of the Declaration and in accordance with the Condominium Act of the Virgin Islands, subsequent phases of the Condominium may include Commercial Units in addition to Residences. In anticipation of the creation of a Commercial Unit, the Declaration is hereby amended to include the following provisions:

"Unit" shall mean that part of the Property submitted to the Condominium which is designed for either residential or commercial usage and subject to exclusive ownership by one or more persons.

"Commercial Unit" shall specifically refer to a Unit that is designated for commercial use, subject to any particular covenants, conditions and restrictions that may be imposed thereon in connection with the creation and conveyance of such Commercial Unit.

"Neighborhood Association" shall refer to that certain U.S. Virgin Islands not for profit corporation to be organized for the purpose of owning the Commercial Unit CU-1, the commercial use of which is intended to include the

delivery of food and beverage services to the occupants of Two Bedroom Suite Residences in Phase 5 and Phase 6 of the Condominium. Phase 6 shall consist of Building G located on Remainder Parcel No. 4 Estate Nazareth or such subdivision thereof as Declarant may create.

Each Owner of a Commercial Unit shall be a Member of the Condominium Association, be subject to the Bylaws and Regulations, hold voting rights and have a Percentage Ownership allocation that is established in accordance with the Declaration, and share in the Common Expenses and the Common Surplus. For the limited purpose of establishing membership in the Members Association, the ownership interest of the Owner of a Commercial Unit shall be deemed to be an ownership interest in a Residence. The designation of any such interest in a Commercial Unit as that of a Residence for such limited purposes shall not be construed to limit the use of such Commercial Unit for its intended commercial purposes.

Each Owner of a Commercial Unit shall enjoy the same rights and benefits as other Owners and Members of the Condominium Association, including, but not limited to, the benefit of easements that are held by such Owners or by the Condominium Association on behalf of the Owners. Each Owner of a Commercial Unit shall be entitled to all revenues generated from permitted commercial activities conducted in the Commercial Unit and upon any Limited Common Elements and Common Elements which are appurtenant to a Commercial Unit. Each Commercial Unit shall be subject to the Association's lien and foreclosure rights, and their use shall be subject to reasonable rules and regulations that are promulgated by the Association from time to time in accordance with the Declaration, but none of which shall unreasonably interfere with the ability to utilize any Commercial Unit for its intended purpose. Each Commercial Unit and its Owner shall further be subject to any particular covenants, conditions and restrictions that may be imposed thereon in connection with the creation and conveyance of such Commercial Units.

The boundaries and perimeters of Commercial Units shall be described in the same manner as Residences under the Declaration. Owners of Commercial Units, unlike Residences, shall have the right to install decorations, fixtures and coverings on the interior surfaces of the walls, ceilings and floors. Owners of Commercial Units may make any improvements or alterations to its Unit that do not impair the structural integrity or mechanical systems of, or lessen the support of, any portion of any other Unit. The Condominium Association shall have the same housekeeping, repair, maintenance and replacement responsibilities with respect to the interior furnishings, decorations, fixtures and coverings and with respect to the Common Elements and Limited Common Elements that service or support Commercial Units, including the conduits, wiring, ducts,

plumbing, other facilities for the furnishing of utility services, bearing walls, structural supports and other such items, as it does with respect to Residences.

Except for the Declarant who has the reserved right to do so, an Owner of a Commercial Unit may not subdivide a Commercial Unit into smaller Commercial Units without the approval of the Association. The Declarant or an Owner of a Commercial Unit may also convey a Commercial Unit, or any subdivision thereof in the case of Declarant, to the Association for no or nominal consideration without the consent of any other Owner or the Association, and the Association shall be obligated to accept such conveyance. A Commercial Unit will only be transferred to the Association free of service contracts or other obligations other than as provided in the Declaration, By-laws and Rules and Regulations, all as amended from time to time. A Commercial Unit conveyed to the Association as contemplated herein may only be conveyed by the appropriate officers of the Association to a third party in accordance with the same restrictions, which govern the conveyance, by the Association of portions of the Common Elements. Notwithstanding the rights to generally conduct commercial activities in a Commercial Unit, and to specifically conduct such activities as set forth herein, each Owner of a Commercial Unit has the right, in said Owner's sole and absolute discretion, not to engage in any commercial activity, unless otherwise provided herein.

6. All Owners of Residences that are designated as a Two Bedroom Suite in Phase 5 or Phase 6 shall, in addition to being Members of the Condominium Association, be mandatory members of the Neighborhood Association whose contemplated sole initial purpose shall be to own and operate Commercial Unit CU-1, anticipated to be created in Phase 6, and which may provide certain food and beverage services for the exclusive benefit of the occupants from time to time of the Two Bedroom Suites, whether or not such occupants are Members of the Neighborhood Association. More particularly, and in accordance with the separate organizational and governing documents of the Neighborhood Association, its members shall control the Neighborhood Association and be responsible for all costs and expenses related to the ownership, maintenance and operation of the Commercial Unit owned by it, including but not limited to any services that it may elect to provide.

In addition to the lien in favor of the Members Association against each Residence or Residence Interest, as applicable, for any unpaid assessments and for interest accruing thereon, together with related charges, as set forth in the Declaration, all Owners of Residences that are designated as a Two Bedroom Suite shall, in addition, be subject to a lien in favor of the Neighborhood Association to secure any unpaid assessments, fees or special charges imposed on members of the Neighborhood Association pursuant to the Bylaws of the Neighborhood Association, which shall include, but not be limited to, interest, costs and attorney's fees incurred in the collection of a delinquent payment or enforcement of a lien. The Neighborhood Association lien shall be effective from and after recording a claim of lien in the Public Records of the U.S. Virgin Islands stating the legal description of the Residence (or Residence Interest, as

applicable) the name of the Member of record, the amount claimed to be due and the due dates. The lien shall continue in effect until all sums secured by the lien shall have been fully paid or until such time as is otherwise permitted by law. Such claims of lien shall be signed and verified by an officer of the Neighborhood Association, or by an authorized agent of the Neighborhood Association, e.g., officer or designated employee of the manager retained by the Neighborhood Association. Upon full payment, the party making payment shall be entitled to a recordable satisfaction of lien, to be prepared and recorded at such party's expense. All Neighborhood Association liens shall be subordinate to any Members Association lien and any mortgage recorded prior to the date of recording the claim of lien in favor of the Neighborhood Association, and all such liens may be foreclosed by suit brought in the name of the Neighborhood Association in the same manner as a foreclosure of a mortgage on real property, or as otherwise provided by applicable law. The Neighborhood Association may also sue to recover a money judgment for unpaid assessments without thereby waiving any claim of lien.

In the event a Mortgagee holding a first priority mortgage shall obtain title to a Residence Interest as a result of the foreclosure of such mortgage, or in the event such Mortgagee shall obtain title to a Residence Interest as the result of a conveyance in lieu of foreclosure of such mortgage, such Mortgagee shall not be liable, except to the extent required under the laws of the U.S. Virgin Islands, for that share of the Neighborhood Association expenses or assessments chargeable to the Residence Interest, or the member thereof, which became due prior to the acquisition of title by such Mortgagee.

7. Use of the Commercial Unit in any manner intended to promote, market or otherwise solicit interest in any fractional, timeshare, travel club or other resort residential membership program or project, other than with Declarant's or its successor's or assign's express written consent, which may be denied in their sole and absolute discretion, is hereby expressly prohibited.

8. In all other respects the Declaration remains unchanged, and all provisions relating to the Property now apply to the Property which by this Fourth Amendment has become part of the Condominium.

[signature pages follow]

Book:  
Pages: 0000  
Doc# 2008012707  
Filed & Recorded  
12/09/2005 02:34PM  
WILLIAM G. HARRIS  
REGISTRAR OF DEEDS  
ST THOMAS/ST JOHN  
PER PAGE FEE \$ 24.00  
AUTHORITY FEE \$ 14.00  
RECORDING FEE \$ 25.00

12/09/2005 8:26am  
Official Records of  
St. Thomas-St. John  
Wilma D. Hoyt Smith  
Recorder of Deeds

IN WITNESS WHEREOF, the undersigned, being the Declarant, has caused its seal to be hereunto affixed and these presents to be signed by its officer thereunder duly authorized the day and year first above written.

WITNESSES:

RC HOTELS (VIRGIN ISLANDS), INC.

[Signature]  
[Signature]

By: The Ritz-Carlton Club, St. Thomas, Inc., a U.S. Virgin Islands corporation

By: [Signature]  
Attorney-in-Fact, pursuant to Power of Attorney dated April 29, 2002, and Recorded on May 31, 2002, as Doc. No. 2002002737  
Print Name: Ann L. Pierce  
As its: Vice President

STATE OF FLORIDA )  
COUNTY OF ORANGE ) ss:

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of December, 2005, by Ann L. Pierce as Attorney-in-Fact for The Ritz-Carlton Club, St. Thomas, Inc., a U.S. Virgin Islands corporation, on behalf of RC Hotels (Virgin Islands), Inc., a U.S. Virgin Islands corporation.

WITNESS my hand and seal this 15<sup>th</sup> day of December, 2005.

[Signature]  
Notary Public

V:\ORL\335-Legal\Legal Shared\RCU-St. Thomas (2015)RCU-St. Thomas II\Conversion of 24 Hotel Units\Virgin Islands\Condo and Supplementary Declaration agais Condo Dec Amds\Fourth Am of Condo Dec d 11 30 05.doc

**LUANNE M. MELCHIOR**  
Notary Public  
St. Thomas-St. John, U.S. Virgin Islands  
My Commission Expires July 27, 2009  
NP-062-05

DOC# 280581279

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

Doc# 288312777





**Brian Moseley  
& Associates, Inc.**  
Land Surveyors & Consultants

DWG. No. 1659-5B

DWG. Date: 04-13-05

Parcel No. 4-10  
Estate Nazareth  
No. 1 Red Hook Quarter  
St. Thomas, U.S. Virgin Islands  
Page 1 of 2

OLG No. A9-6SD-T005

**BOUNDARY DESCRIPTION:**

Beginning at a point common to Parcel No. 4-9, Parcel No. 4-2, and Parcel No. 4-10, the line runs

N 75° 45' 47" E a distance of 14.00' along Parcel No. 4-2 to a point, thence

N 75° 45' 47" E a distance of 53', more or less, along Parcel No. 4-2 to a point on the Great Bay Shoreline, thence

Meandering in a southerly direction along the shoreline of Great Bay a distance of 150', more or less, to a point, thence

S 35° 56' 27" W a distance of 65', more or less, along Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

S 35° 56' 27" W a distance of 14.44' along Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

S 35° 56' 27" W a distance of 213.21' along Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

N 54° 57' 19" W a distance of 89.35' along Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

S 84° 12' 51" W a distance of 44.53' along Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

S 84° 12' 51" W a distance of 21.52' along Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

N 27° 26' 38" W a distance of 88.24' along R.O.W. Parcel No. 4-4 to a point, thence

N 71° 28' 00" E a distance of 20.24' along Parcel No. 4-2 to a point, thence

N 71° 28' 00" E a distance of 70.59' along Parcel No. 4-2 to a point, thence

4003 RAPHUNE HILL ROAD • SUITE 606 • ST. THOMAS, VI 00802 • PHONE (340) 774-5310 • FAX (340) 776-4090

Doc# 2885812779

**FILED**

May 27, 2022 04:33 PM  
SCT-Civ-2022-0002  
VERONICA HANDY, ESQUIRE  
CLERK OF THE COURT

12-02-05:00:41PM: Brian Moseley & Associates

2340-776-4090 # 5/ 5



**Brian Moseley  
& Associates, Inc.**  
Land Surveyors & Consultants

DWG. No. 1659-5B

DWG. Date: 04-13-05

Parcel No. 4-10  
Estate Nazareth  
No. 1 Red Hook Quarter  
St. Thomas, U.S. Virgin Islands  
Page 2 of 2

N 31° 04' 50" E a distance of 47.63' along Parcel No. 4-2 to a point, thence  
N 51° 47' 39" E a distance of 29.85' along Parcel No. 4-2 to a point, thence  
S 73° 58' 54" E a distance of 55.87' along Parcel No. 4-2 to a point, thence  
N 82° 39' 36" E a distance of 22.23' along Parcel No. 4-2 to a point, thence  
N 07° 20' 24" W a distance of 15.87' along Parcel No. 4-2 to a point, thence  
N 68° 22' 38" E a distance of 62.40' along Parcel No. 4-9 to a point, thence  
Northerly an arc distance of 33.60' on a curve to the right having a radius of 232.00' along Parcel  
No. 4-9 to a point, thence  
N 13° 19' 32" W a distance of 89.99' along Parcel No. 4-9 to the point of origin.

The bearings are correlated with A9-624-T003.

The area is 1.135 acres.

Brian Moseley and Associates, Inc.

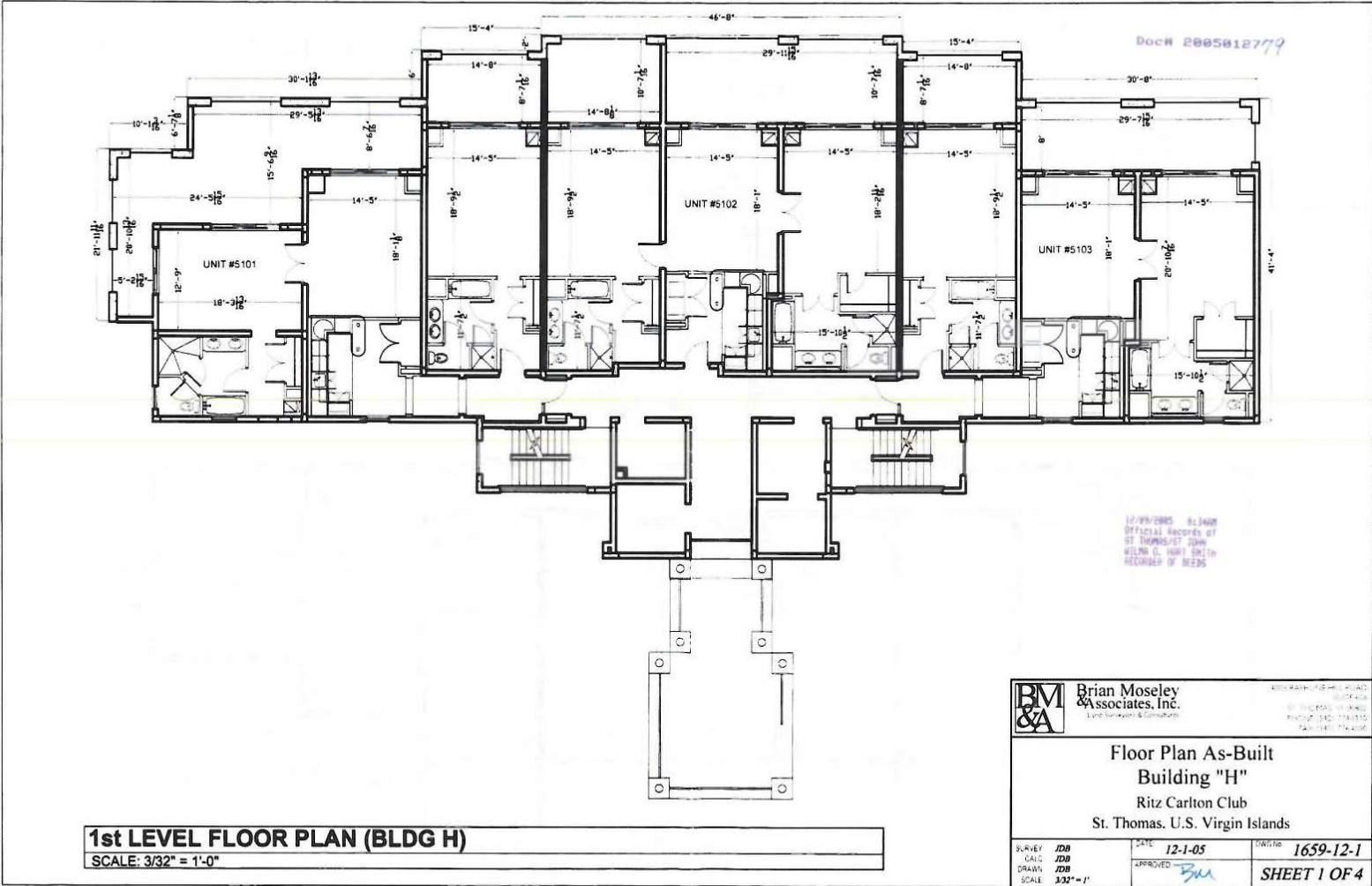
*Brian M. Moseley*  
Brian M. Moseley, PLS #502-LS



REC'D 20220512 09:08

**EXHIBIT "B"**  
**FLOOR PLANS**

Doc# 20051277



Doc# 2005012779

12/05/2005 8:34AM  
 OFFICIAL RECORDS OF  
 ST THOMAS ST. JOHN  
 WILLIAM G. HART SMITH  
 RECORDER OF DEEDS



**Brian Moseley  
 & Associates, Inc.**  
 Land Surveyors & Consultants

4000 PARKVIEW AVE., SUITE 200  
 ST. THOMAS, VI. 01103  
 PHONE: (340) 774-1510  
 FAX: (340) 774-4399

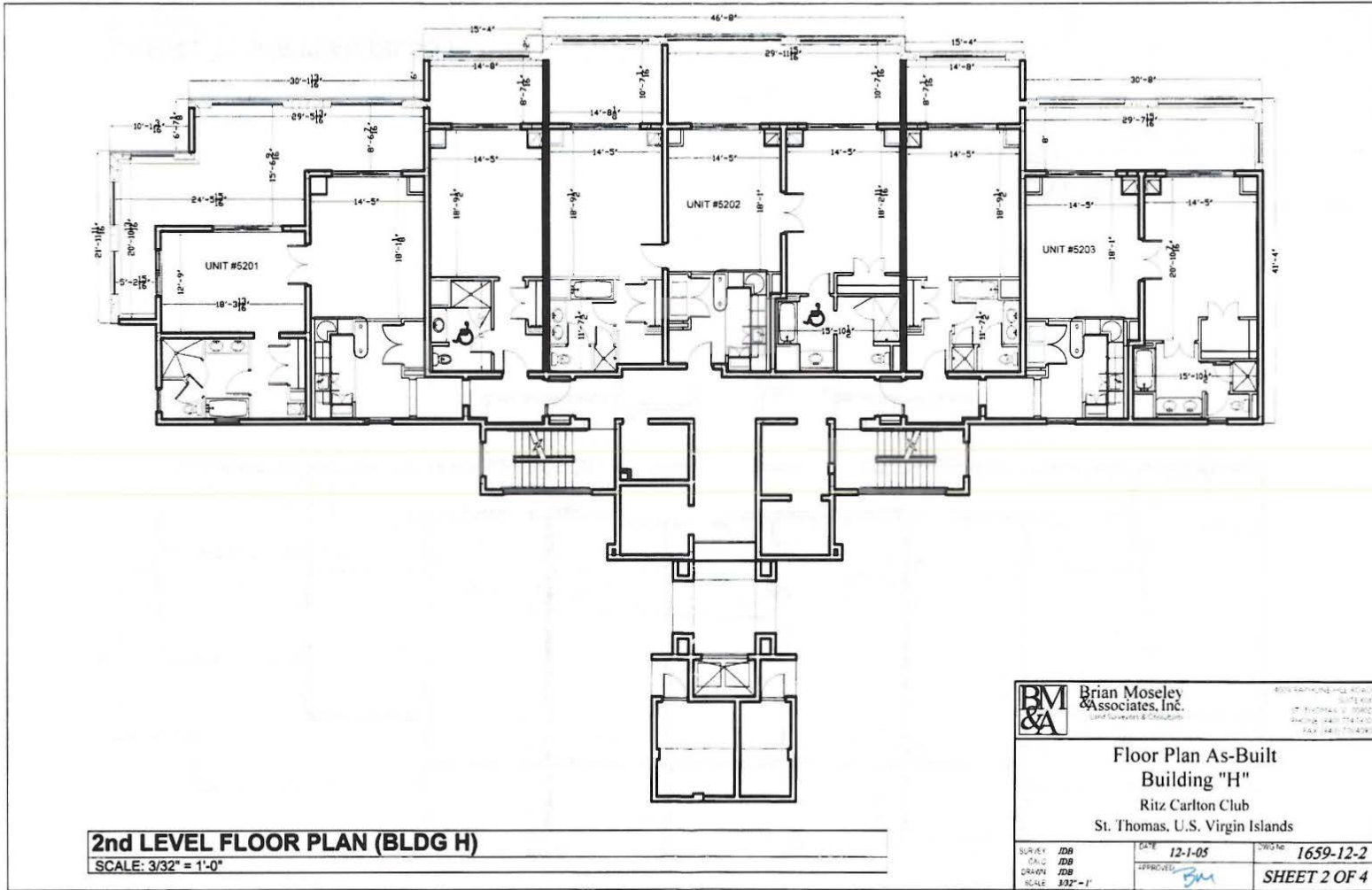
**Floor Plan As-Built  
 Building "H"**

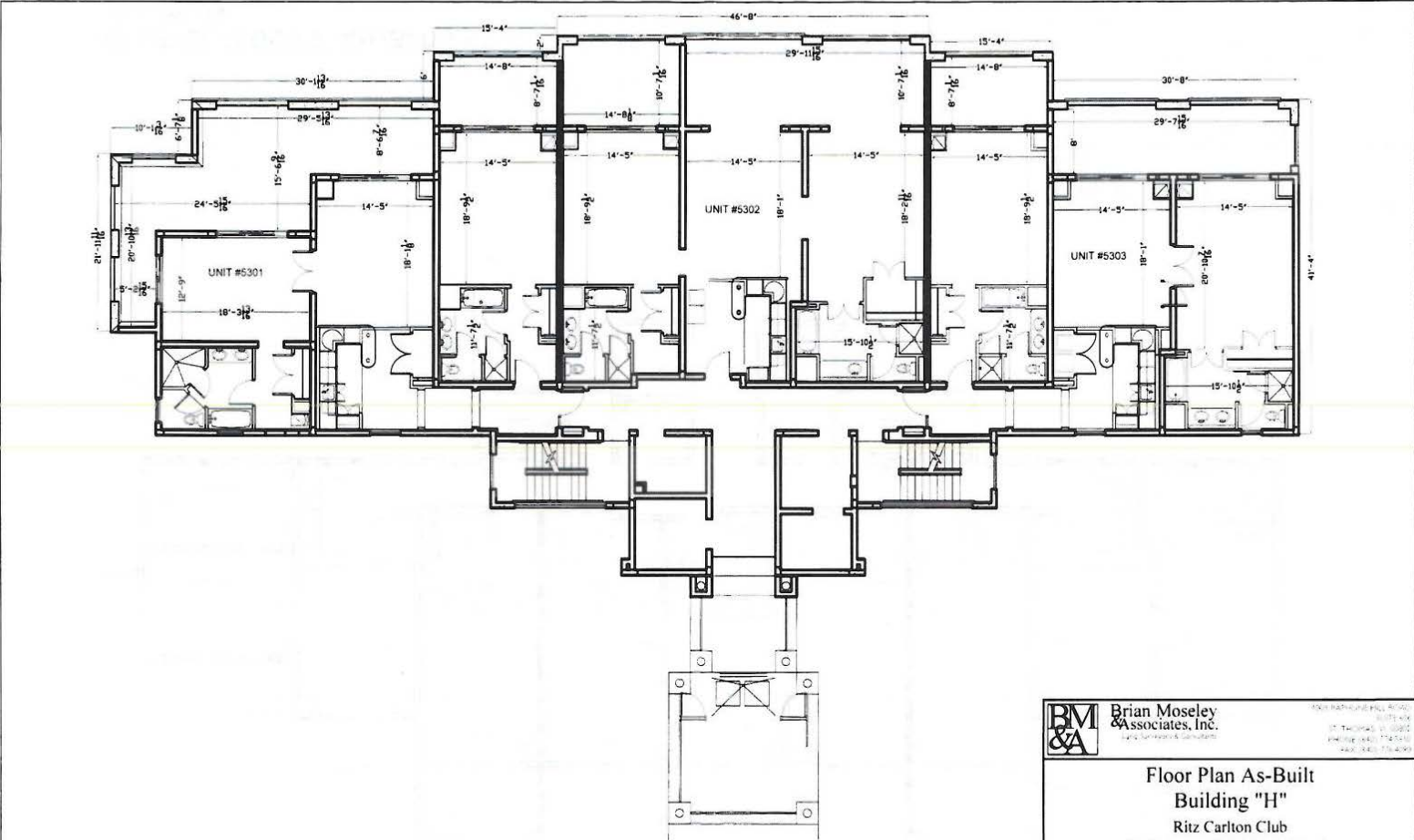
Ritz Carlton Club  
 St. Thomas, U.S. Virgin Islands

SURVEY	JDB	DATE	12-1-05	DWG#	1659-12-1
CALC.	JDB	APPROVED	<i>BMA</i>	SHEET 1 OF 4	
DRAWN	JDB				
SCALE	3/32" = 1'-0"				

**1st LEVEL FLOOR PLAN (BLDG H)**

SCALE: 3/32" = 1'-0"

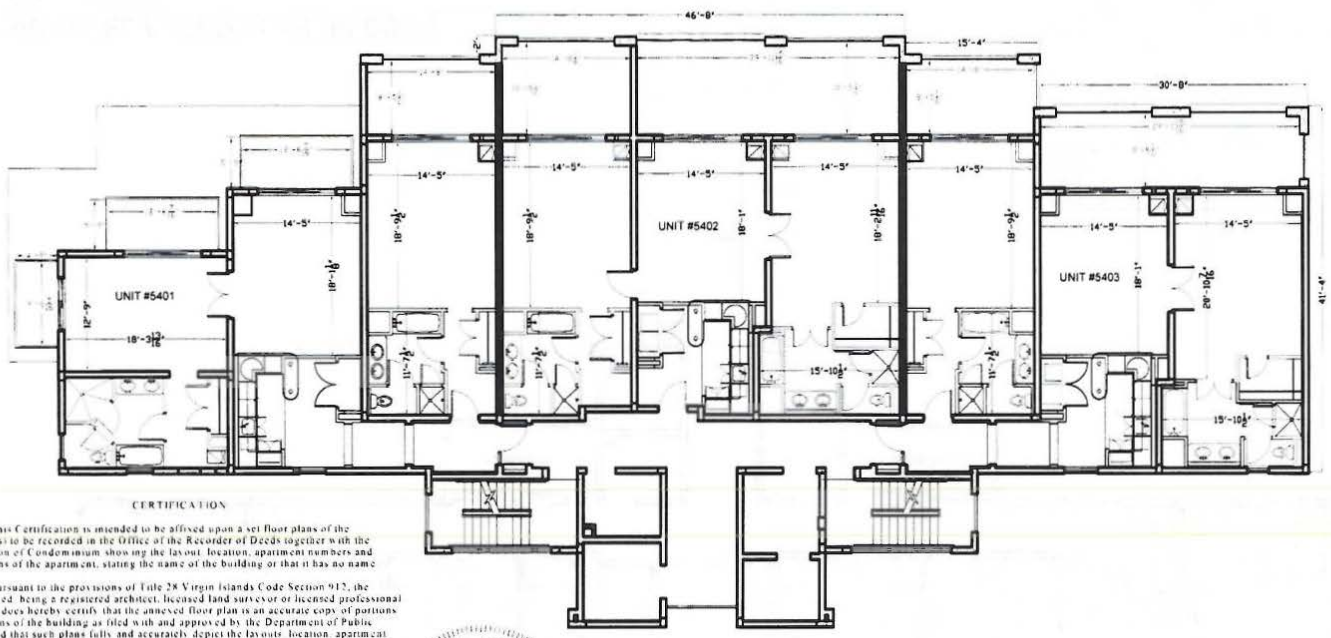




**3rd LEVEL FLOOR PLAN (BLDG H)**

SCALE: 3/32" = 1'-0"

	<b>Brian Moseley &amp; Associates, Inc.</b> <small>ARCHITECTS &amp; CONSULTANTS</small>		1000 BATHURST AVENUE SUITE 400 ST. THOMAS, VI 00080 PHONE: (463) 774-5310 FAX: (463) 776-4099
	<b>Floor Plan As-Built</b> <b>Building "H"</b> <b>Ritz Carlton Club</b> <b>St. Thomas, U.S. Virgin Islands</b>		
SURVEY: <b>JDB</b> CALC: <b>JDB</b> DRAWN: <b>JDB</b> SCALE: <b>1/32" = 1'</b>	DATE: <b>12-1-05</b> APPROVED:	DWG NO: <b>1659-12-3</b> <b>SHEET 3 OF 4</b>	



**CERTIFICATION**

This Certification is intended to be affixed upon a set floor plans of the building(s) to be recorded in the Office of the Recorder of Deeds together with the Declaration of Condominium showing the layout, location, apartment numbers and dimensions of the apartment, stating the name of the building or that it has no name.

Pursuant to the provisions of Title 28 Virgin Islands Code Section 912, the undersigned, being a registered architect, licensed land surveyor or licensed professional engineer, does hereby certify that the annexed floor plan is an accurate copy of portions of the plans of the building as filed with and approved by the Department of Public Works and that such plans fully and accurately depict the layouts, location, apartment numbers and dimensions of the apartments as built.

Certified this 1<sup>st</sup> day of December, 2005.

BRIAN MOSELEY & ASSOCIATES, INC.  
*Brian M. Moseley*  
 Brian M. Moseley, R.L.S. & A.



TERRITORY OF THE VIRGIN ISLANDS  
 DISTRICT OF ST. THOMAS & ST. JOHN

The foregoing was acknowledged before me this 2<sup>nd</sup> day of December, 2005 by Brian M. Moseley, a Virgin Islands registered land surveyor.

*Denise Fraguela*  
 Notary Public

DENISE FRAGUELA  
 NP-022-03  
 COMM. EXPIRES 12-15-06

**4th LEVEL FLOOR PLAN (BLDG H)**  
 SCALE: 3/32" = 1'-0"

<b>Brian Moseley &amp; Associates, Inc.</b> Land Surveyors & Consultants	4005 KAPPAHOLE HILL ROAD ST. THOMAS, VI, 01082 PHONE (340) 734-2779 FAX (340) 734-4350	
	<b>Floor Plan As-Built</b> <b>Building "H"</b> <b>Ritz Carlton Club</b> <b>St. Thomas, U.S. Virgin Islands</b>	
SURVEY: JDB CALC: JDB DRAWN: JDB SCALE: 3/32" = 1'	DATE: 12-1-05 APPROVED: <i>Brian Moseley</i>	DWG No: 1659-12-4 <b>SHEET 4 OF 4</b>

**EXHIBIT "C"**  
**PERCENTAGE OWNERSHIP ALLOCATION**

Doc# 28881277



THE RITZ-CARLTON CLUB, ST. THOMAS  
 HELICONIA, IRIS, JASMINE, KAVA & LILY BUILDINGS  
 CONDOMINIUM DECLARATION - EXHIBIT C

UNIT NO.	UNIT TYPE	LOCATION	AREA	VALUE	% INTEREST	VOTES
1101	2br	End	1826	\$ 1,341,450.00	1.012289%	0.94143
1102	2br	Center	1826	\$ 1,341,450.00	1.012289%	0.94143
1103	2br	Center	1826	\$ 1,341,450.00	1.012289%	0.94143
1201	2br	End	1826	\$ 1,341,450.00	1.012289%	0.94143
1202	2br	Center	1826	\$ 1,341,450.00	1.012289%	0.94143
1203	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
1204	2br	End	1826	\$ 1,341,450.00	1.012289%	0.94143
1301	2br	End	1826	\$ 1,341,450.00	1.012289%	0.94143
1302	2br	Center	1826	\$ 1,341,450.00	1.012289%	0.94143
1303	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
1304	2br	End	1826	\$ 1,341,450.00	1.012289%	0.94143
1401	2br	End	1826	\$ 1,341,450.00	1.012289%	0.94143
1402	2br	Center	1826	\$ 1,341,450.00	1.012289%	0.94143
1403	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
1404	2br	End	1826	\$ 1,341,450.00	1.012289%	0.94143
1501	2br	End	1826	\$ 1,341,450.00	1.012289%	0.94143
1502	2br	Center	1826	\$ 1,341,450.00	1.012289%	0.94143
1503	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
1504	2br	End	1826	\$ 1,341,450.00	1.012289%	0.94143
1601	2br	End	1826	\$ 1,341,450.00	1.012289%	0.94143
1602	2br	Center	1826	\$ 1,341,450.00	1.012289%	0.94143
1603	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
1604	2br	End	1826	\$ 1,341,450.00	1.012289%	0.94143
2101	2br	End	1826	\$ 1,341,450.00	1.012289%	0.94143
2102	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
2103	2br	Center	1826	\$ 1,341,450.00	1.012289%	0.94143
2201	2br	End	1826	\$ 1,341,450.00	1.012289%	0.94143
2202	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
2203	2br	Center	1826	\$ 1,341,450.00	1.012289%	0.94143
2204	2br	End	1826	\$ 1,341,450.00	1.012289%	0.94143
2301	2br	End	1826	\$ 1,341,450.00	1.012289%	0.94143
2302	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
2303	2br	Center	1826	\$ 1,341,450.00	1.012289%	0.94143
2304	2br	End	1826	\$ 1,341,450.00	1.012289%	0.94143
2401	2br	End	1826	\$ 1,341,450.00	1.012289%	0.94143
2402	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
2403	2br	Center	1826	\$ 1,341,450.00	1.012289%	0.94143
2404	2br	End	1826	\$ 1,341,450.00	1.012289%	0.94143
2501	2br	End	1826	\$ 1,341,450.00	1.012289%	0.94143
2502	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
2503	2br	Center	1826	\$ 1,341,450.00	1.012289%	0.94143
2504	2br	End	1826	\$ 1,341,450.00	1.012289%	0.94143
3101	2br	End	1826	\$ 1,341,450.00	1.012289%	0.94143
3102	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
3103	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
3104	2br	End	1826	\$ 1,341,450.00	1.012289%	0.94143
3201	2br	End	1826	\$ 1,341,450.00	1.012289%	0.94143
3202	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
3203	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
3204	2br	End	1826	\$ 1,341,450.00	1.012289%	0.94143
3301	2br	End	1826	\$ 1,341,450.00	1.012289%	0.94143
3302	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
3303	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
3304	2br	End	1826	\$ 1,341,450.00	1.012289%	0.94143
3401	2br	End	1826	\$ 1,341,450.00	1.012289%	0.94143
3402	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
3403	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
3404	2br	End	1826	\$ 1,341,450.00	1.012289%	0.94143
3501	2br	End	1826	\$ 1,341,450.00	1.012289%	0.94143
3502	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
3503	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702

Doc# 2005012774

**EXHIBIT "D"**  
**EASEMENT B-1**  
**AND EASEMENT A-4**

Doc# 20051277

12/05/2005 8:34AM  
Official Records of  
ST. THOMAS-ST. JOHN  
WILLIAM G. HUNT SMITH  
RECORDER OF DEEDS



**Brian Moseley  
& Associates, Inc.**  
Land Surveyors & Consultants

DWG. No. 1659-3B

DWG. Date: 04-13-05

Easement "B-1"  
over Parcel No. 4-10  
Estate Nazareth  
No. 1 Red Hook Quarter  
St. Thomas, U.S. Virgin Islands

OLG No. \_\_\_\_\_

**BOUNDARY DESCRIPTION:**

Beginning at a point common to Parcel No. 4-9, Parcel No. 4-2, Parcel No. 4-10, and Easement "B-1", the line runs

N 75° 45' 47" E a distance of 14.00' over Parcel No. 4-10 to a point, thence

S 13° 19' 22" E a distance of 90.21' over Parcel No. 4-10 to a point, thence

Southeasterly an arc distance of 99.27' on a curve to the left having a radius of 218.00' over Parcel No. 4-10 to a point, thence

S 35° 56' 27" W a distance of 14.44' along Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

Northeasterly an arc distance of 75.70' on a curve to the right having a radius of 232.00' over Parcel No. 4-10 to a point, thence

Northerly an arc distance of 33.60' on a curve to the right having a radius of 232.00' along Parcel No. 4-9 to a point, thence

N 13° 19' 32" W a distance of 89.99' along Parcel No. 4-9 to the point of origin.

The bearings are correlated with A9-624-T003.

The area is 2,721 Square Feet, more or less.

Brian Moseley and Associates, Inc.

*Brian M. Moseley*  
Brian M. Moseley, PLS #502-LS



Doc# 283812779

12/09/2005 8:34AM  
OFFICIAL Records of  
ST. THOMAS, ST. JOHN  
HELENA D. HUNT SMITH  
RECORDER OF DEEDS



**Brian Moseley  
& Associates, Inc.**  
Land Surveyors & Consultants

DWG. No. 1659-5B

DWG. Date: 04-13-05

Utility Easement "A-4"  
over Parcel No. 4-10  
Estate Nazareth  
No. 1 Red Hook Quarter  
St. Thomas, U.S. Virgin Islands

OLG No. \_\_\_\_\_

**BOUNDARY DESCRIPTION:**

Beginning at a point common to R.O.W. Parcel No. 4-4, Parcel No. 4-2, Parcel No. 4-10, and Utility Easement "A-4", the line runs

N 71° 28' 00" E a distance of 20.24' along Parcel No. 4-2 to a point, thence

S 27° 26' 38" E a distance of 93.05' over Parcel No. 4-10 to a point, thence

S 84° 12' 51" W a distance of 21.52' along Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

N 27° 26' 38" W a distance of 88.24' along R.O.W. Parcel No. 4-4 to the point of origin.

The bearings are correlated with A9-624-T003.

The area is 1,812 Square Feet, more or less.

Brian Moseley and Associates, Inc.

*Brian M. Moseley*  
Brian M. Moseley, PLS #502-LS



Doc# 2885812779



# **EXHIBIT 11**

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

RECEIVED  
18 DEC -5 PM 1:51  
SUPERIOR COURT

GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.	)	CIVIL NO. ST - 18 - CV -
	)	
PLAINTIFF,	)	ACTION FOR DECLARATORY
V.	)	JUDGMENT, TO CANCEL DEED
	)	AND TO QUIET TITLE
THE NEIGHBORHOOD ASSOCIATION, INC.	)	JURY TRIAL DEMANDED
	)	
DEFENDANT.	)	

**COMPLAINT**

**COMES NOW** the Plaintiff, **GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.**, by and through its undersigned counsel, and for its Complaint states as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action and the Parties pursuant to 4 V.I.C. § 76(a) as amended.
2. Venue is proper in the division of St. Thomas and St. John pursuant to 4 V.I.C. §78, as all the parties are located on St. Thomas, the underlying transaction occurred on St. Thomas, the property in question is located on St. Thomas, and the Defendants are subject there to service of process.

**THE PARTIES**

3. Plaintiff, **GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.** (hereinafter "**GBCOA**"), is a not for profit condominium association organized and existing pursuant to the Virgin Islands Condominium Act, with the capacity to sue and be sued in its own name. **GBCOA** is the duly organized association of unit owners for the Ritz-Carlton Club in St. Thomas, pursuant to the Declaration of Condominium,

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.	)	
	)	CIVIL NO. ST - 18 - CV -
PLAINTIFF,	)	
V.	)	ACTION FOR DECLARATORY JUDGMENT, TO CANCEL DEED AND TO QUIET TITLE
THE NEIGHBORHOOD ASSOCIATION, INC.	)	
DEFENDANT.	)	<b>JURY TRIAL DEMANDED</b>

**COMPLAINT**

**COMES NOW** the Plaintiff, **GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.**, by and through its undersigned counsel, and for its Complaint states as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action and the Parties pursuant to 4 V.I.C. § 76(a) as amended.
2. Venue is proper in the division of St. Thomas and St. John pursuant to 4 V.I.C. §78, as all the parties are located on St. Thomas, the underlying transaction occurred on St. Thomas, the property in question is located on St. Thomas, and the Defendants are subject there to service of process.

**THE PARTIES**

3. Plaintiff, GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC. (hereinafter "GBCOA"), is a not for profit condominium association organized and existing pursuant to the Virgin Islands Condominium Act, with the capacity to sue and be sued in its own name. GBCOA is the duly organized association of unit owners for the Ritz-Carlton Club in St. Thomas, pursuant to the Declaration of Condominium,



subsequent supplemental declarations and amendments thereto, and the Association's bylaws.

4. Defendant THE NEIGHBORHOOD ASSOCIATION, INC. (hereinafter "NA") is a not for profit corporation organized and existing under the laws of the Virgin Islands, NA is the owner of a condominium unit identified as Commercial Unit ("CU-1") in Building G at the Ritz-Carlton Club, St. Thomas, Virgin Islands.

#### **COMMERCIAL UNIT CU-1**

5. The Neighborhood Association, Inc. was incorporated on September 28, 2005, the objects and purposes for which the Association was formed including "[t]o provide the owners of interval ownership interests in condominium units in Buildings G and H ("Suite Interests") of Great Bay Condominium (the "Condominium") with an entity responsible for administering a commercial unit in the Condominium ("Unit") and "accept the rights and to assume the obligations imposed upon the Unit under that certain Declaration of Condominium". See **Exhibit 1**, *Articles of Incorporation of The Neighborhood Association, Inc. (A Corporation Not for Profit)*, executed September 28, 2005 and filed with the Recorder of Deeds on November 11, 2008 as Document No. 2008010725.

6. "The Members of The Neighborhood Association, Inc. are the owners of the units located in Buildings G and H, both buildings being a part of Great Bay Condominium". See **Exhibit 1**, *Articles of Incorporation of The Neighborhood Association, Inc. (A Corporation Not for Profit)*, at "Affidavit" executed November 5, 2008 and filed with the Recorder of Deeds on November 11, 2008 as Document No. 2008010725.

7. RC Hotels (Virgin Islands) Inc. submitted property including a “Commercial Unit CU-1” to a condominium form of ownership on November 15, 2005. See **Exhibit 2**, *Fourth Amendment to Declaration Establishing a Plan for Condominium Ownership of Parcel Nos. 4 – 2 and 4 – 3 Estate Nazareth, No 1 Red Hook Quarter, St Thomas Virgin Islands*, executed on November 15, 2005 and filed with the Recorder of Deeds on December 9, 2005 as Document No. 2005012779 (the “2005 Amendment”); see also **Exhibit 3**, *Fourth Amendment to Supplementary Declaration of Condominium for the Club at Great Bay Condominium*, executed on June 6, 2006 and filed with the Recorder of Deeds on July 18, 2006 as Document No. 2006007164 (the “2006 Amendment”).

8. The 2005 Amendment provides that the “‘Neighborhood Association’ shall refer to that certain U.S. Virgin Islands not for profit corporation to be organized for the purpose of owning the Commercial Unit CU-1”. See **Exhibit 2**, *2005 Amendment* at page 2, ¶ 5.

9. The Neighborhood Association “shall be obligated to accept such conveyance [of a Commercial Unit by the Declarant or Owner]”. See **Exhibit 2**, *2005 Amendment*, p. 4.

10. The 2005 Amendment includes a condition precedent to the conveyance of commercial unit(s), to wit: “[a] Commercial Unit will only be transferred to the Association free of service contracts or other obligations other than as provided in the Declaration, By-Laws and Rules and Regulations, all as amended from time to time.” *Id.*

11. On December 20, 2008, RC Hotels (Virgin Islands) Inc., in furtherance of the objects and purposes for which the Neighborhood Association Inc. was formed, and in

accord with Paragraph 5 of the 2005 Amendment, conveyed in fee simple to The Neighborhood Association, Inc. (the "Association") the real property described as:

The Unit known as CU-1 (hereinafter the "Unit") in the Great Bay Condominium, at the property known as Parcel Nos. 4-2, 4-3, 4-4, 4-5, 4-6, 4-7, 4-8, 5-33A, 4-10, Remainder Parcel No. 4 (Southeastern Portion) Estate Nazareth, No. 1 Red Hook Quarter, St. Thomas, U.S. Virgin Islands and Remainder Parcel No. 4 (Southwestern Portion) Estate Nazareth, No. 2 Red Hook Quarter, St. Thomas, U.S. Virgin Islands, designated and described as such in the Declaration of Condominium for Great Bay Condominium Declaration and the Supplementary Declaration of Condominium for the Club at Great Bay Condominium (collectively, the "Declaration") respectively establishing plans for condominium ownership and interval ownership of said buildings and said property, made by RC Hotels (Virgin Islands), Inc. under the Condominium Act of the Virgin Islands of the United States (Chapter 33, Title 28, Virgin Islands Code), dated May 10 2002, and recorded in the Office of the Recorder of Deeds for St. Thomas and St. John, U.S. Virgin Islands, on May 31 2002, as Document Nos. 2002002741 and 2002002742, respectively, as subsequently expanded and amended.

See **Exhibit 4**, *Condominium Deed* dated December 20, 2008 and filed with the Recorder of Deeds on December 30, 2008 as Document No. 200812283.

12. RC Hotels (Virgin Islands) Inc. subsequently waived the Deed Restrictions contained in the 2008 Deed. See **Exhibit 5**, *Waiver of Deed Restrictions*, executed January 24, 2014 and filed with the Recorder of Deeds on February 5, 2014 as Document No. 2014000751.

13. The 2005 Amendment imposed certain restrictions on the conveyance of a Commercial Unit by the Neighborhood Association to a third party, to wit: "[a] Commercial Unit conveyed to the Association as contemplated herein may only be conveyed by the appropriate officers of the Association to a third party in accordance with the same restrictions which govern the conveyance, by the Association of portions of the common elements." See **Exhibit 2**, *2005 Amendment*, p. 4.

**COMPLAINT**

14. Article II, Paragraph 2.13 of the *Supplementary Declaration of Condominium for The Club at Great Bay Condominium* defines “Common Elements” as “those items defined in Chapter 33 as Common Area and Facilities to the extent herein applicable [ ]”. See **Exhibit 6**, *Supplementary Declaration of Condominium for The Club at Great Bay Condominium*, executed April 11, 2002 and filed with the Recorder of Deeds on May 31, 2002 as Document No. 20020022742.

15. Title Twenty – Eight, Chapter 33 of the Virgin Islands Code (the “Condominium Act”) states that:

[t]he percentage of the undivided interest of each apartment owner in the common areas and facilities as expressed in the declaration shall have a permanent character and shall not be altered without the consent of all of the apartment owners expressed in an amended declaration duly recorded. The percentage of the undivided interest in the common areas and facilities 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 conveyance or other instrument.

28 V.I.C. § 905(b).

16. The statutory language of Section 905 is reflected in Article 6 of the *Supplementary Declaration of Condominium*: “[e]ach Residence Interest shall have as an appurtenance thereto that undivided share of the Common Elements”. See **Exhibit 6**, *Supplementary Declaration of Condominium*, at p. 15, Art. VI, ¶ 6.1.

17. Any conveyance of property in which two or more persons share an undivided interest is restricted in that each person sharing interest in the property must approve and consent to the alienation of the property, or an interested owner may seek partition of the property.

18. Partition of the Common Elements of the Club at Great Bay is restricted: “[t]he share of the undivided percentage interest in the Common Elements appurtenant to each Residence Interest shall remain undivided, and no Owner, Member, or other shall bring, or have any right to bring, any action for partition or division of same.” See **Exhibit 6**, *Supplementary Declaration of Condominium*, at p. 15, Art. VI, ¶ 6.2.

19. The combined effects of the prohibition on partition and the ownership of undivided interests restricts conveyance of the Common Elements and any conveyance of the Common Elements under the Declarations and Virgin Islands Law necessarily requires unanimous consent by those holding undivided interests.

20. The 2005 Amendment applies the restriction on conveyance of Common Elements to a conveyance by NA to a third party of a commercial unit and requires unanimous consent and approval of all those with an undivided interest in the commercial unit.

21. A conveyance by the Neighborhood Association of the Commercial Unit CU-1 to a third party requires, at minimum, unanimous consent of all Neighborhood Association Members.

22. GBCOA and NA entered into a Ratification Agreement on May 30, 2014 in an attempt to address the consequences of the structural deficiencies of the renovation undertaken by NA. See **Exhibit 7**, *Ratification Agreement*, executed May 30, 2014, at p. 1.

23. The 2014 Ratification Agreement provides that, in the event that any person or entity acquires more than 33% of the voting interest in NA, then NA could be liable to GBCOA at NA’s sole cost and expense, to restore the premises [CU-1] to its condition

before the work which GBCOA ratified in the 2014 Ratification Agreement, or to pay GBCOA the amount equivalent to restore the property. See **Exhibit 7**, *Ratification Agreement*, at ¶ 7.

24. Upon information and belief, The Marriott Vacation Club owns greater than 33% of the voting interest in NA.

25. The Ratification Agreement creates a financial obligation of NA to GBCOA upon GBCOA exercising its option thereunder. See **Exhibit 7**, *Ratification Agreement*.

26. GBCOA entered and engaged in negotiations with NA during June and July 2017 regarding the financial obligations of NA assumed under the Ratification Agreement.

27. The Parties failed to reach agreement regarding NA's financial obligations and duties, or resolving the restoration of the CU-1 Unit.

28. Upon information and belief, Neighborhood Association officer Salvatore Cutrone unilaterally executed a document titled "Condominium Deed" on September 20, 2017. See **Exhibit 8**, "*Condominium Deed*", executed September 20, 2017.

29. The Neighborhood Association failed to acquire from all Members of the Neighborhood Association unanimous consent to the attempted conveyance of Commercial Unit CU-1.

30. NA's attempt to convey the Commercial Unit CU-1 to GBCOA failed to accord with the Declaration of Condominium restrictions on conveyance of Commercial Units identical to restrictions on conveyance of the Common Elements.

**COMPLAINT**

31. GBCOA rejected the purported tender of title to Commercial Unit CU-1 on or before November 2, 2017. See **Exhibit 9**, *Email from Abigail Chung on behalf of GBCOA to Salvatore Cutrona*, dated November 2, 2017.

32. GBCOA is not obligated to accept title to Commercial Unit CU-1.

33. There is no agreement between GBCOA and NA for the gift, conveyance, or transfer in any form of Commercial Unit CU-1.

**FIRST CAUSE OF ACTION  
CANCELLATION OF DEED AS VOID FOR FAILURE TO COMPLY WITH  
DECLARATION OF CONDOMINIUM – COMMON ELEMENTS RESTRICTION**

34. Each specific count should be read to incorporate all foregoing paragraphs.

35. Defendant Neighborhood Association lacked the authority to grant, gift, donate, or otherwise assign title to the Commercial CU-1 Unit for failure to acquire unanimous consent from the Members of the Neighborhood Association.

36. The purported conveyance contemplated by the 2017 “Condominium Deed” executed by the Neighborhood Association fails to satisfy the restrictions placed on transfers of the common elements of the Condominium at Great Bay, as required by the 2005 Amendment for transfers from the Association to Third Parties. See **Exhibit 2**, *2005 Amendment*.

**SECOND CAUSE OF ACTION  
CANCELLATION OF DEED AS VOID FOR FAILURE TO COMPLY WITH  
DECLARATION OF CONDOMINIUM – EXISTING ENCUMBRANCES**

37. Each specific count should be read to incorporate all foregoing paragraphs.

38. The 2005 Amendment includes, as a condition precedent to conveyance to “the Association” that the property be free of service contracts and “other obligations”. See **Exhibit 2**, *2005 Amendment*, p. 4.

39. The 2005 Amendment states that “[e]ach Owner of a Commercial Unit shall be a Member of the Condominium Association, be subject to the Bylaws and Regulations, hold voting rights and have a Percentage Ownership allocation that is established in accordance with the Declaration, and share in the Common Expenses and the Common Surplus. *Id.*

40. RC’s conveyance of the Commercial Unit CU-1 to the Neighborhood Association in 2008 made NA a Member of GBCOA.

41. The Neighborhood Association is “responsible for all costs and expenses related to the ownership and operation of the Commercial Unit CU-1”. See **Exhibit 3, 2006 Amendment**, p.3, ¶5.

42. The Neighborhood Association, incident to its ownership of the Commercial Unit CU-1 and resulting membership in GBCOA, is obligated to pay Membership Dues and Assessments to GBCOA.

43. The Neighborhood Association failed to pay the 2017 Annual Dues and Assessments, encumbering the Commercial Unit CU-1.

44. The unpaid 2017 dues and assessments constitute “other obligations” of which the commercial unit must be free prior to conveyance. See **Exhibit 2, 2005 Amendment**, p. 4.

45. Upon information and belief, the Neighborhood Association, incident to its ownership of Commercial Unit CU-1, owed outstanding tax obligations relating to and encumbering Commercial Unit CU-1 at the time of the purported conveyance.



**COMPLAINT**

46. Upon information and belief, the Neighborhood Association, incident to its ownership of Commercial Unit CU-1, owed outstanding utility bills for CU-1 at the time of the purported conveyance.

47. The 2014 Ratification Agreement creates a financial obligation of NA to GBCOA upon GBCOA exercising its option thereunder, and NA's duties under the Ratification Agreement constitute "other obligations" per the 2005 Amendment and void the purported conveyance. See **Exhibit 7**, *Ratification Agreement*.

48. The above stated debts, obligations, and encumbrances on Commercial Unit CU-1 incurred by the Neighborhood Association constitute "other obligations" of which the Commercial Unit must be freed prior to conveyance pursuant to the 2005 Amendment.

49. The purported conveyance of the Commercial Unit CU-1 by the Neighborhood Association is void *ab initio* for failure to satisfy the condition precedent contained in the 2005 Amendment.

**THIRD CAUSE OF ACTION  
CANCELLATION OF DEED AS VOID FOR FAILURE TO CONTRACT**

50. Each specific count should be read to incorporate all foregoing paragraphs.

51. The Neighborhood Association and GBCOA engaged in negotiations regarding the future of the Commercial Unit CU-1, including contemplating the necessary terms and conditions for a change in the ownership of the CU-1 Unit.

52. No offer was ever accepted by either party.

53. No consideration was given or exchanged in support of any agreement.

54. No agreement was reached by and between GBCOA and NA regarding the future ownership of the CU-1 Unit.

55. The purported conveyance contemplated by the “Condominium Deed” executed by the Neighborhood Association fails for rejection of terms and conditions offered; there was never a “meeting of the minds”.

56. The purported conveyance contemplated by the “Condominium Deed” executed by the Neighborhood Association fails for lack of consideration.

57. The purported conveyance contemplated by the “Condominium Deed” fails for lack of acceptance – Plaintiff GBCOA rejected title to the property, rejected the document titled “Condominium Deed”, and disclaimed the purported conveyance.

58. The “Condominium Deed” signed by Salvatore Cutrona on September 20, 2017 is legally insufficient to convey the property known as the Commercial Unit CU-1.

**FOURTH CAUSE OF ACTION  
QUIET TITLE TO COMMERCIAL UNIT CU-1**

59. Each specific count should be read to incorporate all foregoing paragraphs.

60. RC Hotels (Virgin Islands) Inc. conveyed to The Neighborhood Association, Inc. the Commercial Unit CU-1 by Condominium Deed dated December 20, 2008. See **Exhibit 4**, *Condominium Deed*.

61. The Neighborhood Association Inc. was formed with the sole purpose of owning the Commercial Unit CU-1. See **Exhibit 1**, *Articles of Incorporation*; **Exhibit 2**, *2005 Amendment*; **Exhibit 3**, *2006 Amendment* at p. 2, ¶ 5.

62. Upon information and belief, the Neighborhood Association was not authorized to convey the Commercial Unit CU-1 when its president, Salvatore Cutrona, executed the document titled “Condominium Deed” on September 20, 2017.

63. GBCOA refused the delivery of the purported conveyance and disclaimed the purported transfer of title to Commercial Unit CU-1. See **Exhibit 8**, *Email from Abigail Chung*, November 2, 2017.

64. Plaintiff GBCOA is not the owner of the Commercial Unit CU-1.

65. The Neighborhood Association, Inc. is the past and current owner of Commercial Unit CU-1.

66. Plaintiff GBCOA seeks a declaration that the title to the subject property, Commercial Unit CU-1, is vested in Defendant The Neighborhood Association, Inc. alone, along with all rights, easements, covenants, and obligations associated with the Unit, and with ownership of property interests pursuant to the Declaration of Condominium, as amended.

**FIFTH CAUSE OF ACTION  
DECLARATORY JUDGMENT (5 V.I.C. § 1261)**

67. Each specific count should be read to incorporate all foregoing paragraphs.

68. Pursuant to Title 5 Section 1261 of the Virgin Islands Code, Plaintiff GBCOA in good faith requests that the Court declare the following:

a. The Neighborhood Association, Inc. is the owner of the subject property known as "Commercial Unit CU-1" and more fully described as:

The Unit known as CU-1 (hereinafter the "Unit") in the Great Bay Condominium, at the property known as Parcel Nos. 4-2, 4-3, 4-4, 4-5, 4-6, 4-7, 4-8, 5-33A, 4-10, Remainder Parcel No. 4 (Southeastern Portion) Estate Nazareth, No. 1 Red Hook Quarter, St. Thomas, U.S. Virgin Islands and Remainder Parcel No. 4 (Southwestern Portion) Estate Nazareth, No. 2 Red Hook Quarter, St. Thomas, U.S. Virgin Islands, designated and described as such in the Declaration of Condominium for Great Bay Condominium Declaration and the Supplementary Declaration of Condominium for the Club at Great Bay Condominium (collectively, the "Declaration") respectively establishing plans for condominium ownership

**COMPLAINT**

and interval ownership of said buildings and said property, made by RC Hotels (Virgin Islands), Inc. under the Condominium Act of the Virgin Islands of the United States (Chapter 33, Title 28, Virgin Islands Code), dated May 10 2002, and recorded in the Office of the Recorder of Deeds for St. Thomas and St. John, U.S. Virgin Islands, on May 31 2002, as Document Nos. 2002002741 and 2002002742, respectively, as subsequently expanded and amended;

b. The purported conveyance of the aforementioned property, Commercial Unit CU-1, by The Neighborhood Association, Inc. to the Great Bay Condominium Owners Association, Inc. dated September 20, 2017 is void, *ab initio*, for failure to comply with the common elements restriction on conveyance of commercial units imposed by the Fourth Amendment to Declaration of Condominium (the "2005 Amendment");

c. The purported conveyance of the aforementioned property, Commercial Unit CU-1, by The Neighborhood Association, Inc. to the Great Bay Condominium Owners Association, Inc. dated September 20, 2017 is void, *ab initio*, for failure to satisfy the condition precedent to transfer, that the commercial unit be free of "other obligations";

d. The purported conveyance of the aforementioned property, Commercial Unit CU-1, by The Neighborhood Association, Inc. to the Great Bay Condominium Owners Association, Inc. dated September 20, 2017 is void for failure to contract;

e. The purported conveyance of the aforementioned property, Commercial Unit CU-1, by The Neighborhood Association, Inc. to the Great Bay Condominium Owners Association, Inc., dated September 20, 2017, is void for


Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.  
Civil No. ST-18-CV-\_\_\_\_\_  
**COMPLAINT**

rejection and non-acceptance of the title and deed to Commercial Unit CU-1 by  
GBCOA; and

f. The disclaimer of ownership by Great Bay Condominium Owners  
Association, Inc. invalidates the purported conveyance.

**WHEREFORE**, for the above-stated reasons, Plaintiff Great Bay Condominium Owners  
Association, Inc. respectfully requests this Court grant the relief prayed for by quieting  
title to the Commercial Unit CU-1 in the Neighborhood Association, Inc., awarding  
attorneys' fees for the cost of this action, as well as such other relief the Court deems  
just and proper.

Respectfully submitted,



---

**W. MARK WILCZYNSKI, ESQUIRE**

The Law Office of W. Mark Wilczynski, P.C.  
Attorney for Plaintiff:

**Great Bay Condominium Owners  
Association, Inc.**

Palm Passage Ste. C20-22 P.O. Box 1150

St. Thomas, V.I. 00804

Tel: (340) 774 – 4547

Fax: (340) 774 – 4759

[mark@usvilaw.com](mailto:mark@usvilaw.com)

V.I. Bar No. 515

Dated: December 4, 2018

**FILED**

May 27, 2022 04:33 PM  
SCT-Civ-2022-0002  
VERONICA HANDY, ESQUIRE  
CLERK OF THE COURT

EXHIBIT 1

**A.000343**

**ARTICLES OF INCORPORATION**  
**OF**  
**THE NEIGHBORHOOD ASSOCIATION, INC.**  
**(A Corporation Not for Profit)**

We the undersigned, being natural persons competent to contract, for the purpose of forming a corporation not for profit pursuant to the provisions of Title 13 Virgin Islands Code Chapter 3, do hereby adopt, subscribe and acknowledge the following Articles of Incorporation:

**ARTICLE I. NAME AND ADDRESS**

The name of the corporation is The Neighborhood Association, Inc. (hereinafter referred to as the "Association"). The street and mailing address of the initial office of the Association is Parcel 4 Estate Nazareth, No. 1 Red Hook Quarter, St. Thomas, U.S. Virgin Islands.

**ARTICLE II. TERM OF EXISTENCE, COMMENCEMENT AND CONTINUANCE**

The Association shall commence upon the filing of these Articles of Incorporation and the Association shall have perpetual existence.

**ARTICLE III. OBJECTS AND PURPOSES**

The objects and purposes for which the Association is formed are:

- A. To provide the owners of interval ownership interests in condominium units in Buildings G and H ("Suite Interests") of Great Bay Condominium (the "Condominium") with an entity responsible for administering a commercial unit in the Condominium ("Unit"), which Unit the Association initially contemplates leasing, licensing for use or owning for food and beverage service, located in St. Thomas, U.S. Virgin Islands;
- B. To promote the general welfare of the Association and its Members, and to enforce the provisions of the Bylaws and Rules and Regulations of the Association as the same may be amended from time to time;
- C. To cultivate a spirit of helpful cooperation among its Members;
- D. At such time as the Association licenses, owns or leases the Unit, to accept the rights and to assume the obligations imposed upon the Unit under that certain Declaration of Condominium for the Condominium and Supplementary Declaration for the Condominium (collectively, the "Declaration" as such are as amended from time to time) to enforce said rights and to perform said obligations for the benefit of all the members of the Association; and

Doc# 2008010725

E. To act as the governing association of the Association and for any other lawful purposes.

#### **ARTICLE IV. POWERS**

The Association shall have all powers which are not in conflict with these Articles together with such additional specific powers as are contained in the Bylaws and shall specifically have the power to acquire licenses, own and convey real and personal property, to make and collect assessments against members to defray expenses of the Association in administrating the affairs of the Association, enforcing the Rules and Regulations of the Association and to use the proceeds of the assessments in carrying out the objects and purposes for which the Association is formed.

#### **ARTICLE V. QUALIFICATION OF MEMBERS, THE MANNER OF THEIR ADMISSION, AND VOTING**

Section 1. RC Hotels (Virgin Islands), Inc., its successors and/or assigns (hereinafter referred to as "Developer") shall initially hold all memberships in the Association until such time as the purchase of a Suite Interest in the Condominium, then the owner thereof shall also become a member of the Association.

Section 2. Ownership of a Suite Interest shall be a prerequisite to exercising any rights as a member of the Association. All owners of Suite Interests in the Condominium shall become members of the Association upon obtaining legal title thereto and no other persons shall be entitled to membership. Ownership may be held by one or more individuals or by a corporation, partnership, trust or any other appropriate legal entity with the power to hold title.

Section 3. Annual common charges for the Association shall be assessed on each Suite Interest in an amount equal to 1/288<sup>th</sup> of the annual common charges of the Association, and shall be timely paid by the owner thereof to the Association in an amount to be set by the Board of Directors. In the event of the failure of any member to pay any assessment imposed by the Association, the Association shall have all rights to collect such assessment as provided for in the Bylaws or any other governing documents of the Association and in any manner authorized by law. In addition, the Association shall have the right to collect any other sums owing by legal action.

Section 4. Right to membership in the Association shall be established by the records of the Recorder of Deeds for St. Thomas and St. John as to the owner of record for the said Suite Interest. Membership shall be appurtenant to and may not be separated from ownership of any said Suite Interest and ownership of such Suite Interest shall be the sole qualification for membership. Membership shall automatically terminate upon sale or other disposition of title, in accordance with the provisions of the Declaration. The transferor's membership shall automatically transfer and be vested in the new owner succeeding to the ownership interest in the Suite Interest subject to a lien thereon for all unpaid assessments and charges. The Association may rely upon evidence of a recorded deed as evidence of the



transfer of ownership and thereupon terminate the transferor's membership and recognize the membership of the transferee.

Section 5. Membership in the Association may not be assigned, hypothecated or transferred in any manner except with the conveyance of a Suite Interest. Membership shall terminate upon the termination of the Declaration or upon transfer of ownership of a Suite Interest, provided the transfer is accomplished in accordance with all of the provisions of the Declaration.

Section 6. The owner(s) of each Suite Interest shall be entitled to one vote for each Suite Interest owned, as described in the Bylaws. The vote of each Suite Interest shall not be divisible.

Where title to a Suite Interest is held by more than one person, jointly or otherwise, or an association, firm, corporation, trust, partnership or other legal entity, the owners thereof shall collectively be entitled to one vote per Suite Interest owned, which shall be exercised as said owners determine among themselves.

#### **ARTICLE VI. INDEBTEDNESS**

The highest amount of indebtedness to which the Association shall at any time be subject is as voted by the Board of Directors of the Association and shall not exceed \$100,000.

#### **ARTICLE VII. INCORPORATORS**

The names and places of residence of the persons forming the Association are as follows:

<u>Name</u>	<u>Address</u>
James H. Hindels	Parcel No. 6D-12 Estate Nazareth St. Thomas, Virgin Islands 00802
Claude Berry	Parcel No. 9A-6 Estate Lerkenlund St. Thomas, Virgin Islands 00802
Camela Francis	Parcel No. 394A-10 Estate Annas' Retreat St. Thomas, Virgin Islands 00802

#### **ARTICLE VIII. MANAGEMENT**

The management of the Association shall be vested in a Board of Directors whose number shall be as established by the Bylaws but shall not be fewer than three (3) nor more than five (5). The Board of Directors shall be elected pursuant to the Bylaws of the Association, must be members (or employees, officers, directors or authorized representatives

of a member which is a legal entity e.g., corporation, association, firm, trust or partnership) of the Association in good standing, shall be elected by a majority of the vote, and shall serve until their successors are elected and qualify. The Board of Directors shall elect from among its members, by majority vote, a President, one or more Vice Presidents, a Treasurer and a Secretary who shall serve as such at the pleasure of the Board. Vacancies occurring in the Board between annual meetings may be filled by a majority vote of the remaining members of the Board even though the remaining members of the Board do not constitute a quorum as set forth in the Bylaws. The Board may contract in the name of the Association with individual Directors or members in their individual capacity, or as members of any firm, association or corporation and may contract for the management of the Association. The number, terms of office and provisions regarding election, removal and filling of vacancies on the Board of Directors shall be as set forth in the Bylaws of the Association.

#### **ARTICLE IX. BYLAWS**

The Bylaws of the Association are to be made and approved by the initial Board of Directors of the Association, and thereafter may be amended, altered, modified or rescinded as set forth in the Bylaws and as permitted by law.

#### **ARTICLE X. AMENDMENTS TO THE ARTICLES OF INCORPORATION**

Section 1. These Articles of Incorporation may be amended by an affirmative vote of two-thirds of the votes of all the members of the Association entitled to vote thereon, or by written consent of all members without a meeting.

Section 2. Notwithstanding anything herein to the contrary, no amendment shall make any change in the qualifications for membership without approval in writing of all the members of the Association. No amendment which affects the rights and privileges provided to the Developer in Title 13, Chapter 3 or Title 28, Chapter 33 of the Virgin Islands Code or the Declaration shall be effective without the written consent of the Developer.

#### **ARTICLE XI. ADDITIONAL PROVISIONS**

Section 1. No officer, director or member shall be personally liable for any debt or other obligation of the Association.

Section 2. The Association shall not be operated for profit. This corporation is organized under a non-stock basis, no dividend shall be paid, and no part of the income of the Association shall be distributed to its members, directors or officers. The Association may pay compensation in a reasonable amount to its members, directors or officers for services rendered, and may confer benefits upon its members as permitted by law. No such payment, benefit or contribution shall be deemed to be a dividend or distribution of income.

Section 3. Every director and every officer of the Association, any person made a party to any action, suit or proceeding, by reason of the fact that he, his testator or intestate representative is or was a director or officer of the Association, shall be indemnified by the

Association for all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved by reason of his being or having been a director or officer at the time such expenses are incurred, except in such cases wherein the director or the officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement, the indemnification herein shall apply only when the Board of Directors has approved such settlement and reimbursement as being in the best interests of the Association. The foregoing indemnification shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.

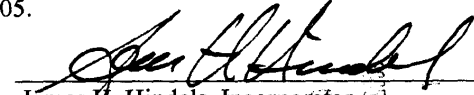
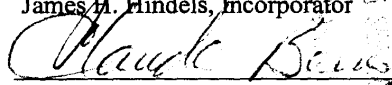
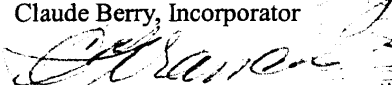
**ARTICLE XII. PRINCIPAL OFFICE AND RESIDENT AGENT**

The principal office of the Association is Parcel 4 Estate Nazareth, No. 1 Red Hook Quarter, St. Thomas, Virgin Islands and the resident agent is The Prentice-Hall Corporation System, Inc., whose mailing address is Citibank Bldg. Suite 208, Veterans Drive, P.O. Box 305304, St. Thomas, U.S. Virgin Islands 00803.

**ARTICLE XIII. DISSOLUTION**

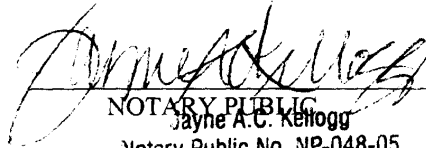
Upon dissolution the assets of the corporation shall be distributed to the members of the Association in an amount equal to 1/288<sup>th</sup> for each Suite Interest.

In Witness Whereof, the undersigned incorporators have hereunto set their hands and seals this 28 day of September, 2005.

  
James H. Hindels, Incorporator  
  
Claude Berry, Incorporator  
  
Camela Francis, Incorporator

TERRITORY OF THE VIRGIN ISLANDS )  
DISTRICT OF ST. THOMAS & ST. JOHN ) ss:

The foregoing was acknowledged before me this 28 day of September, 2005, by James H. Hindels, Claude Berry and Camela Francis, as incorporators.

  
NOTARY PUBLIC  
Jayne A. C. Kellogg  
Notary Public No. NP-048-05  
My Commission Expires: June 26, 2009  
District of St. Thomas and St. John

## EXHIBIT 2

12/01/2005 11:44P  
Official Records of  
ST. THOMAS, VI  
WILSON G. HEAT SMITH  
RECORDER OF DEEDS

**FOURTH AMENDMENT TO  
DECLARATION ESTABLISHING A PLAN FOR CONDOMINIUM  
OWNERSHIP OF PARCEL NOS. 4-2 AND 4-3  
ESTATE NAZARETH, NO. 1 RED HOOK QUARTER,  
ST. THOMAS, U.S. VIRGIN ISLANDS,  
PURSUANT TO CHAPTER 33, TITLE 28 OF  
THE VIRGIN ISLANDS CODE.**

Doc# 2005012799

THIS FOURTH AMENDMENT TO DECLARATION is made effective the 1<sup>st</sup> day of November 2005, by RC HOTELS (VIRGIN ISLANDS), INC., a corporation organized and existing under the laws of the U.S. Virgin Islands, whose principal office is situated at Parcel No. 6 Estate Nazareth, St. Thomas, Virgin Islands, hereinafter referred to as the "Declarant":

WHEREAS, by Declaration Establishing a Plan for Condominium Ownership of Parcel Nos. 4-2 and 4-3 Estate Nazareth, No. 1 Red Hook Quarter, St. Thomas, U.S. Virgin Islands, Pursuant to Chapter 33, Title 28 of the Virgin Islands Code made on May 10, 2002, and recorded in the Office of the Recorder of Deeds for St. Thomas and St. John on May 31, 2002, as Document No. 2002002741, as amended by that certain First Amendment recorded on July 5, 2002 in the Office of the Recorder of Deeds for St. Thomas and St. John as Document No. 2002003593 (the "First Amendment"), that certain Second Amendment recorded on December 6, 2002 in the Office of the Recorder of Deeds for St. Thomas and St. John as Document No. 2002006963 (the "Second Amendment") and that certain Third Amendment recorded on January 7, 2004 in the Office of the Recorder of Deeds for St. Thomas and St. John as Document No. 2004000046 (the "Third Amendment") (collectively, together with all corrective instruments and other amendments related thereto, the "Declaration"), the Declarant submitted the land described therein to the provisions of Chapter 33, Title 28, Virgin Islands Code, known also as the "Condominium Act of the Virgin Islands", which condominium is known as Great Bay Condominium;

WHEREAS, Declarant desires to amend the Declaration pursuant to Article 19 thereof in order to submit to the Condominium the land, building and improvements relating to the Phase described herein, containing Building H;

NOW, THEREFORE, pursuant to Article 19 of the Declaration, the Declaration is hereby amended in the following respects only:

1. The Declaration is hereby amended to submit the land described on **Exhibit "A"** attached hereto, together with Building H and related improvements thereon erected, owned by the Declarant in fee simple absolute (hereinafter, separately sometimes referred to as the Phase Five (5) Property, but together with the previously submitted land and improvements, collectively referred to as the "Property"), to the provisions of Chapter 33, Title 28, Virgin Islands Code, known also as the "Condominium Act of the Virgin Islands". The Phase Five (5) Property being submitted to the Declaration is hereby made subject to such reciprocal easements, covenants and restrictions as may be necessary to implement and further the purposes and intent of that certain Reciprocal Easement

Agreement by and between Marriott Hotel Services, Inc., a Delaware corporation and RC Hotels (Virgin Islands), Inc., a Delaware corporation recorded in the Official Records of St. Thomas/St. John as Document Number 2002002739 on May 31, 2002, as such instrument has been amended from time to time and, in particular, to reserve unto Declarant for the benefit of all property owned by Declarant adjacent to and in the vicinity of the Phase Five (5) Property and to grant for the benefit of the Condominium and all Owners of any part thereof, and to and for the benefit of all successors and assigns of the foregoing parties, nonexclusive, perpetual, reciprocal utility and access easements for the use, maintenance, repair and replacement of existing facilities, utilities and other improvements subject to and in accordance with the terms and conditions of, and in all respects as if originally set forth in, the Reciprocal Easement Agreement, over, under and upon the parcels designated as Easement "B-1" and as Easement "A-4" in **Exhibit "D"** attached hereto.

2. Floor Plans of Building H of Phase Five (5) of the Condominium, certified by Brian Moseley and Associates, are set forth in **Exhibit "B"** attached hereto, including the location and identification numbers for each Residence. Building H will contain twelve (12) Residences, is four (4) stories tall and is constructed of concrete masonry and drywall. The twelve (12) Residences located in Building H shall be designated as "Two Bedroom Suites". The occupancy of Two Bedroom Suites, inclusive of children, shall be limited to six (6) people at a time.

3. The schedule set forth in **Exhibit "C"** attached hereto includes a list of all Residences, including the Residences in Building H of Phase Five (5) of the Condominium, approximate areas, number of bedrooms, percentage of ownership and votes of each Residence.

4. **Exhibit "B"**, Percentage Ownership Allocation, of the Declaration is hereby replaced by the attached **Exhibit "C"**.

5. As contemplated by Section 19 of the Declaration and in accordance with the Condominium Act of the Virgin Islands, subsequent phases of the Condominium may include Commercial Units in addition to Residences. In anticipation of the creation of a Commercial Unit, the Declaration is hereby amended to include the following provisions:

"Unit" shall mean that part of the Property submitted to the Condominium which is designed for either residential or commercial usage and subject to exclusive ownership by one or more persons.

"Commercial Unit" shall specifically refer to a Unit that is designated for commercial use, subject to any particular covenants, conditions and restrictions that may be imposed thereon in connection with the creation and conveyance of such Commercial Unit.

"Neighborhood Association" shall refer to that certain U.S. Virgin Islands not for profit corporation to be organized for the purpose of owning the Commercial Unit CU-1, the commercial use of which is intended to include the

delivery of food and beverage services to the occupants of Two Bedroom Suite Residences in Phase 5 and Phase 6 of the Condominium. Phase 6 shall consist of Building G located on Remainder Parcel No. 4 Estate Nazareth or such subdivision thereof as Declarant may create.

Each Owner of a Commercial Unit shall be a Member of the Condominium Association, be subject to the Bylaws and Regulations, hold voting rights and have a Percentage Ownership allocation that is established in accordance with the Declaration, and share in the Common Expenses and the Common Surplus. For the limited purpose of establishing membership in the Members Association, the ownership interest of the Owner of a Commercial Unit shall be deemed to be an ownership interest in a Residence. The designation of any such interest in a Commercial Unit as that of a Residence for such limited purposes shall not be construed to limit the use of such Commercial Unit for its intended commercial purposes.

Each Owner of a Commercial Unit shall enjoy the same rights and benefits as other Owners and Members of the Condominium Association, including, but not limited to, the benefit of easements that are held by such Owners or by the Condominium Association on behalf of the Owners. Each Owner of a Commercial Unit shall be entitled to all revenues generated from permitted commercial activities conducted in the Commercial Unit and upon any Limited Common Elements and Common Elements which are appurtenant to a Commercial Unit. Each Commercial Unit shall be subject to the Association's lien and foreclosure rights, and their use shall be subject to reasonable rules and regulations that are promulgated by the Association from time to time in accordance with the Declaration, but none of which shall unreasonably interfere with the ability to utilize any Commercial Unit for its intended purpose. Each Commercial Unit and its Owner shall further be subject to any particular covenants, conditions and restrictions that may be imposed thereon in connection with the creation and conveyance of such Commercial Units.

The boundaries and perimeters of Commercial Units shall be described in the same manner as Residences under the Declaration. Owners of Commercial Units, unlike Residences, shall have the right to install decorations, fixtures and coverings on the interior surfaces of the walls, ceilings and floors. Owners of Commercial Units may make any improvements or alterations to its Unit that do not impair the structural integrity or mechanical systems of, or lessen the support of, any portion of any other Unit. The Condominium Association shall have the same housekeeping, repair, maintenance and replacement responsibilities with respect to the interior furnishings, decorations, fixtures and coverings and with respect to the Common Elements and Limited Common Elements that service or support Commercial Units, including the conduits, wiring, ducts.

plumbing, other facilities for the furnishing of utility services, bearing walls, structural supports and other such items, as it does with respect to Residences.

Except for the Declarant who has the reserved right to do so, an Owner of a Commercial Unit may not subdivide a Commercial Unit into smaller Commercial Units without the approval of the Association. The Declarant or an Owner of a Commercial Unit may also convey a Commercial Unit, or any subdivision thereof in the case of Declarant, to the Association for no or nominal consideration without the consent of any other Owner or the Association, and the Association shall be obligated to accept such conveyance. A Commercial Unit will only be transferred to the Association free of service contracts or other obligations other than as provided in the Declaration, By-laws and Rules and Regulations, all as amended from time to time. A Commercial Unit conveyed to the Association as contemplated herein may only be conveyed by the appropriate officers of the Association to a third party in accordance with the same restrictions, which govern the conveyance, by the Association of portions of the Common Elements. Notwithstanding the rights to generally conduct commercial activities in a Commercial Unit, and to specifically conduct such activities as set forth herein, each Owner of a Commercial Unit has the right, in said Owner's sole and absolute discretion, not to engage in any commercial activity, unless otherwise provided herein.

6. All Owners of Residences that are designated as a Two Bedroom Suite in Phase 5 or Phase 6 shall, in addition to being Members of the Condominium Association, be mandatory members of the Neighborhood Association whose contemplated sole initial purpose shall be to own and operate Commercial Unit CU-1, anticipated to be created in Phase 6, and which may provide certain food and beverage services for the exclusive benefit of the occupants from time to time of the Two Bedroom Suites, whether or not such occupants are Members of the Neighborhood Association. More particularly, and in accordance with the separate organizational and governing documents of the Neighborhood Association, its members shall control the Neighborhood Association and be responsible for all costs and expenses related to the ownership, maintenance and operation of the Commercial Unit owned by it, including but not limited to any services that it may elect to provide.

In addition to the lien in favor of the Members Association against each Residence or Residence Interest, as applicable, for any unpaid assessments and for interest accruing thereon, together with related charges, as set forth in the Declaration, all Owners of Residences that are designated as a Two Bedroom Suite shall, in addition, be subject to a lien in favor of the Neighborhood Association to secure any unpaid assessments, fees or special charges imposed on members of the Neighborhood Association pursuant to the Bylaws of the Neighborhood Association, which shall include, but not be limited to, interest, costs and attorney's fees incurred in the collection of a delinquent payment or enforcement of a lien. The Neighborhood Association lien shall be effective from and after recording a claim of lien in the Public Records of the U.S. Virgin Islands stating the legal description of the Residence (or Residence Interest, as



applicable) the name of the Member of record, the amount claimed to be due and the due dates. The lien shall continue in effect until all sums secured by the lien shall have been fully paid or until such time as is otherwise permitted by law. Such claims of lien shall be signed and verified by an officer of the Neighborhood Association, or by an authorized agent of the Neighborhood Association, e.g., officer or designated employee of the manager retained by the Neighborhood Association. Upon full payment, the party making payment shall be entitled to a recordable satisfaction of lien, to be prepared and recorded at such party's expense. All Neighborhood Association liens shall be subordinate to any Members Association lien and any mortgage recorded prior to the date of recording the claim of lien in favor of the Neighborhood Association, and all such liens may be foreclosed by suit brought in the name of the Neighborhood Association in the same manner as a foreclosure of a mortgage on real property, or as otherwise provided by applicable law. The Neighborhood Association may also sue to recover a money judgment for unpaid assessments without thereby waiving any claim of lien.

In the event a Mortgagee holding a first priority mortgage shall obtain title to a Residence Interest as a result of the foreclosure of such mortgage, or in the event such Mortgagee shall obtain title to a Residence Interest as the result of a conveyance in lieu of foreclosure of such mortgage, such Mortgagee shall not be liable, except to the extent required under the laws of the U.S. Virgin Islands, for that share of the Neighborhood Association expenses or assessments chargeable to the Residence Interest, or the member thereof, which became due prior to the acquisition of title by such Mortgagee.

7. Use of the Commercial Unit in any manner intended to promote, market or otherwise solicit interest in any fractional, timeshare, travel club or other resort residential membership program or project, other than with Declarant's or its successor's or assign's express written consent, which may be denied in their sole and absolute discretion, is hereby expressly prohibited.

8. In all other respects the Declaration remains unchanged, and all provisions relating to the Property now apply to the Property which by this Fourth Amendment has become part of the Condominium.

[signature pages follow]

Book:  
Pages: 0000  
Doc# 200812777  
Filed & Recorded  
12/09/2005 02:34AM  
WILLIAM G. HART SMITH  
RECORDER OF DEEDS  
ST THOMAS/ST JOHN  
PER PAGE FEE 9 24.00  
ATTACHMENT FEE 9 14.00  
RECORDING FEE 9 25.00

12/09/2005 03:44M  
OFFICIAL RECORDS OF  
ST. THOMAS, ST. JOHN  
WILMA D. HART SMITH  
RECORDER OF DEEDS

IN WITNESS WHEREOF, the undersigned, being the Declarant, has caused its seal to be hereunto affixed and these presents to be signed by its officer thereunder duly authorized the day and year first above written.

RC HOTELS (VIRGIN ISLANDS), INC.

WITNESSES:

[Signature]  
[Signature]

By: The Ritz-Carlton Club, St. Thomas, Inc., a U.S. Virgin Islands corporation

By: [Signature]  
Attorney-in-Fact, pursuant to Power of Attorney dated April 29, 2002, and Recorded on May 31, 2002, as Doc. No. 2002002737.  
Print Name: [Signature]  
As its: [Signature]

STATE OF FLORIDA )  
COUNTY OF ORANGE ) ss:

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of December, 2005, by John L. Pierce, as Attorney-in-Fact for The Ritz-Carlton Club, St. Thomas, Inc., a U.S. Virgin Islands corporation, on behalf of RC Hotels (Virgin Islands), Inc., a U.S. Virgin Islands corporation.

WITNESS my hand and seal this 15<sup>th</sup> day of December, 2005.

[Signature]  
Notary Public

V:\ORL535-Legal\Legal Shared\RCC-St. Thomas (2015)\RCC-St. Thomas II (Conversion of 24 Hotel Units)\Virgin Islands\Condo and Supplementary Declaration apnd\Condo Dec Amd\Fourth Am of Condo Dec.c11.10.05.doc

**LUANNE M. MELCHIOR**  
Notary Public  
St. Thomas-St. John, U.S. Virgin Islands  
My Commission Expires July 27, 2009  
NP-062.05

Doc# 200501279

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

Doc# 2008012779



**Brian Moseley  
& Associates, Inc.**  
Land Surveyors & Consultants

DWG. No. 1659-5B

DWG. Date: 04-13-05

Parcel No. 4-10  
Estate Nazareth  
No. 1 Red Hook Quarter  
St. Thomas, U.S. Virgin Islands  
Page 1 of 2

OLG No. A9-6SD-T005

**BOUNDARY DESCRIPTION:**

Beginning at a point common to Parcel No. 4-9, Parcel No. 4-2, and Parcel No. 4-10, the line runs

N 75° 45' 47" E a distance of 14.00' along Parcel No. 4-2 to a point, thence

N 75° 45' 47" E a distance of 53', more or less, along Parcel No. 4-2 to a point on the Great Bay Shoreline, thence

Meandering in a southerly direction along the shoreline of Great Bay a distance of 150', more or less, to a point, thence

S 35° 56' 27" W a distance of 65', more or less, along Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

S 35° 56' 27" W a distance of 14.44' along Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

S 35° 56' 27" W a distance of 213.21' along Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

N 54° 57' 19" W a distance of 89.35' along Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

S 84° 12' 51" W a distance of 44.53' along Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

S 84° 12' 51" W a distance of 21.52' along Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

N 27° 26' 38" W a distance of 88.24' along R.O.W. Parcel No. 4-4 to a point, thence

N 71° 28' 00" E a distance of 20.24' along Parcel No. 4-2 to a point, thence

N 71° 28' 00" E a distance of 70.59' along Parcel No. 4-2 to a point, thence

4003 RAPHUNE HILL ROAD • SUITE 606 • ST. THOMAS, VI 00802 • PHONE (340) 774-5310 • FAX (340) 776-4090

Doc# 2885812779



**Brian Moseley  
& Associates, Inc.**  
Land Surveyors & Consultants

DWG. No. 1659-5B

DWG. Date: 04-13-05

Parcel No. 4-10  
Estate Nazareth  
No. 1 Red Hook Quarter  
St. Thomas, U.S. Virgin Islands  
Page 2 of 2

N 31° 04' 50" E a distance of 47.63' along Parcel No. 4-2 to a point, thence  
N 51° 47' 39" E a distance of 29.85' along Parcel No. 4-2 to a point, thence  
S 73° 58' 54" E a distance of 55.87' along Parcel No. 4-2 to a point, thence  
N 82° 39' 36" E a distance of 22.23' along Parcel No. 4-2 to a point, thence  
N 07° 20' 24" W a distance of 15.87' along Parcel No. 4-2 to a point, thence  
N 68° 22' 38" E a distance of 62.40' along Parcel No. 4-9 to a point, thence  
Northerly an arc distance of 33.60' on a curve to the right having a radius of 232.00' along Parcel  
No. 4-9 to a point, thence  
N 13° 19' 32" W a distance of 89.99' along Parcel No. 4-9 to the point of origin.

The bearings are correlated with A9-624-T003.

The area is 1.135 acres.

Brian Moseley and Associates, Inc.

*Brian M. Moseley*  
Brian M. Moseley, PLS #502-LS

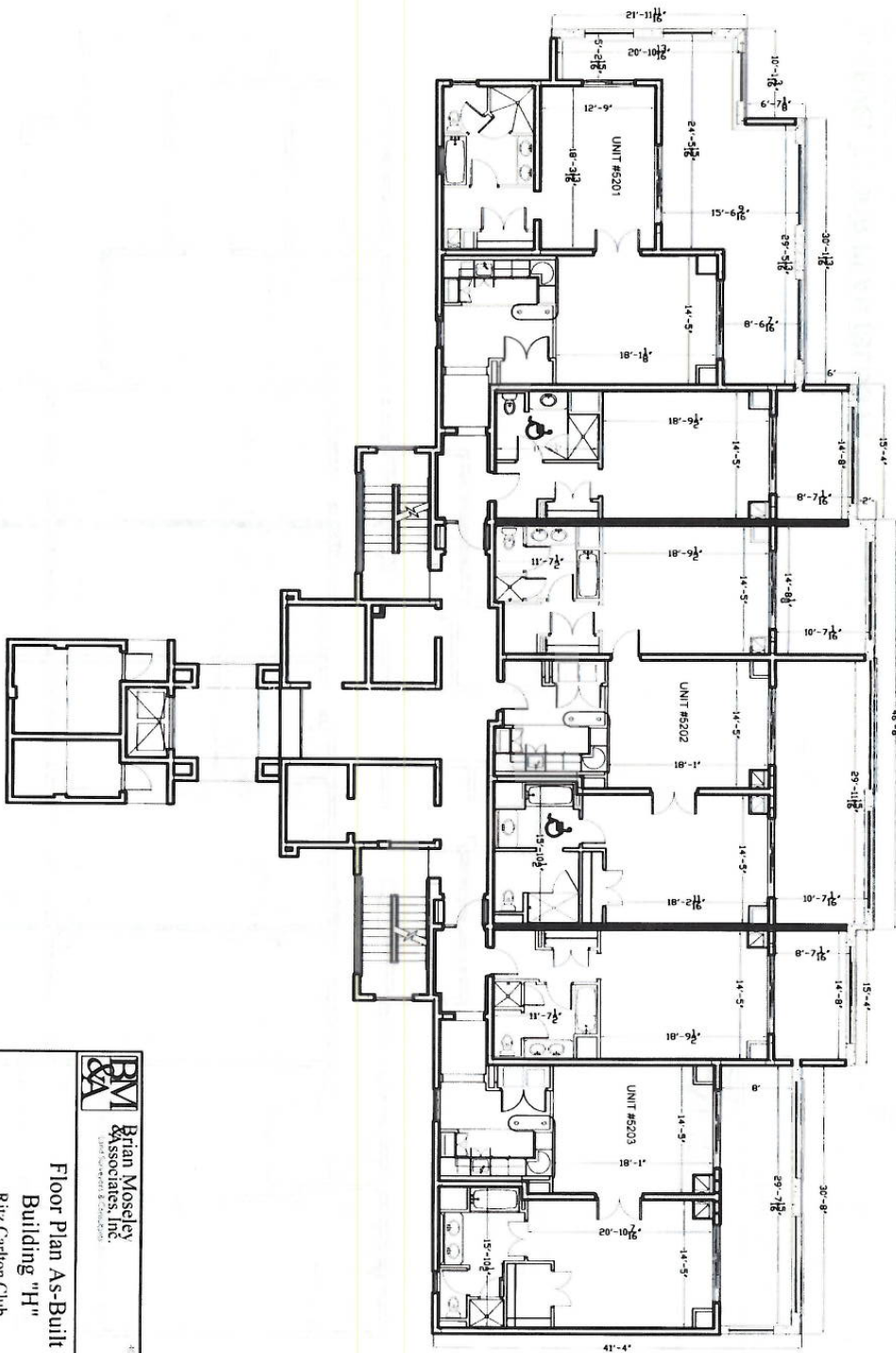


Doc# 2005012777

**EXHIBIT "B"**  
**FLOOR PLANS**

Docu 2005012777

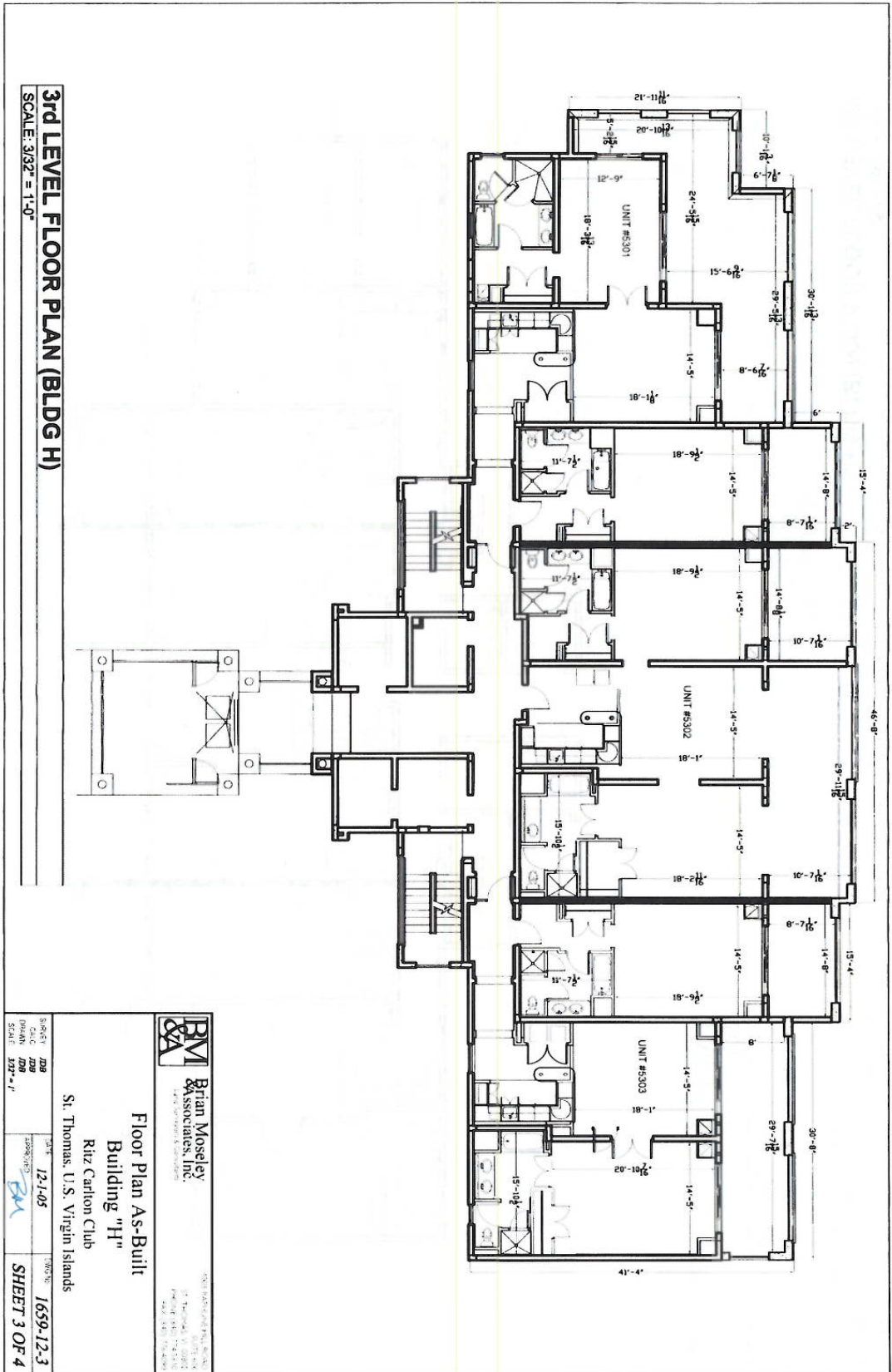




**2nd LEVEL FLOOR PLAN (BLDG H)**  
 SCALE: 3/32" = 1'-0"

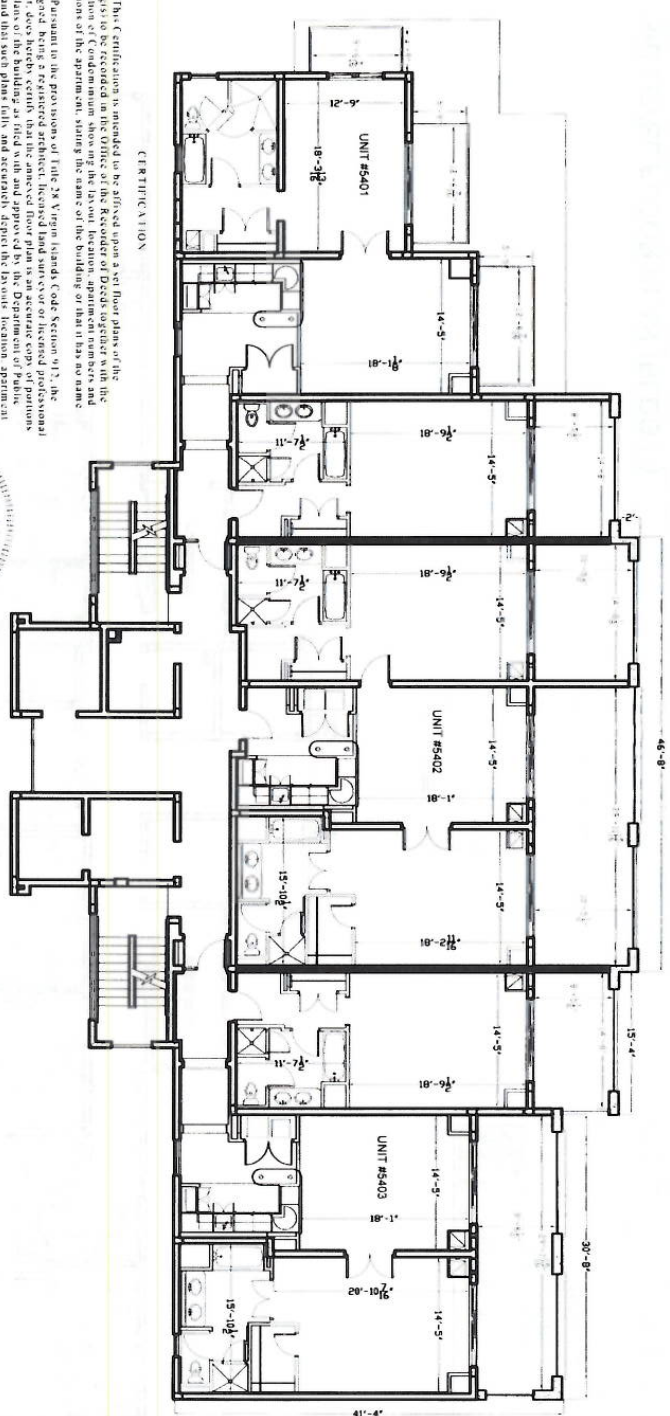
<p><b>Brian Moseley &amp; Associates, Inc.</b>        Civil Engineers &amp; Architects</p>		<p>4015 SANDWICH ROAD, SUITE 100        FARMINGTON, CT 06030        PHONE: (860) 671-1100        FAX: (860) 671-1101</p>	
<p><b>Floor Plan As-Built</b>  <b>Building "H"</b>        Ritz Carlton Club        St. Thomas, U.S. Virgin Islands</p>			
DRAWN BY: <b>JMB</b> CHECKED BY: <b>JMB</b> SCALE: <b>3/32" = 1'-0"</b>	DATE: <b>12-1-05</b> APPROVED BY:	DRAWING NO.: <b>1659-12-2</b>	SHEET NO.: <b>SHEET 2 OF 4</b>





**3RD LEVEL FLOOR PLAN (BLDG H)**  
 SCALE: 3/32" = 1'-0"

<p><b>Brian Moseley &amp; Associates, Inc.</b>        ARCHITECTS</p>		<p>1000 HUNTERSWOOD ROAD, SUITE 100        FORT WORTH, TEXAS 76104        PHONE: (817) 742-2200        FAX: (817) 742-2000</p>	
<p><b>Floor Plan As-Built</b>  <b>Building "H"</b>  <b>Ritz Carlton Club</b>  <b>St. Thomas, U.S. Virgin Islands</b></p>			
<p>DATE: 12-1-05          DRAWN: JTB          SCALE: 3/32" = 1'-0"</p>	<p>DATE: 12-1-05          DRAWN: JTB          SCALE: 3/32" = 1'-0"</p>	<p>DATE: 12-1-05          DRAWN: JTB          SCALE: 3/32" = 1'-0"</p>	<p>DATE: 12-1-05          DRAWN: JTB          SCALE: 3/32" = 1'-0"</p>
<p>PROJECT NO. 1659-12-3</p>		<p>SHEET 3 OF 4</p>	



The Certification is intended to be affixed upon a set floor plan of the buildings to be recorded in the Office of the Recorder of Deeds together with the Declaration of Condominium showing the layout, location, apartment numbers and dimensions of the apartment, stating the name of the building or that it has no name.

Pursuant to the provisions of Title 28 of the Virginia Code Section 9-1-2, the undersigned, being a registered architect, licensed land surveyor or licensed professional engineer, does hereby certify that the annexed floor plan is an accurate copy of portions of the plans of the building as filed with and approved by the Department of Public Safety and that the dimensions of the apartment are as shown on the floor plan.

Certified this 1<sup>st</sup> day of December 2008

BRIAN MOSCLEY & ASSOCIATES, INC.  
 DENISE FRAGUELA  
 ARCHITECT



The foregoing was acknowledged before me this 2nd day of December 2008 by Brian Moscley, a Virginia Islands Registered Land Surveyor.

Denise Fraguella  
 Notary Public

DENISE FRAGUELA  
 NP-022-03  
 COMM. EXPIRES 12-15-06

**4th LEVEL FLOOR PLAN (BLDG H)**  
 SCALE: 3/32" = 1'-0"

<p><b>Brian Moscley &amp; Associates, Inc.</b>          1427 Devonport Boulevard          Norfolk, VA 23502          (757) 622-1100</p>		<p><b>Floor Plan As-Built</b>          Building "H"          Ritz Carlton Club          St. Thomas, U.S. Virgin Islands</p>	
<p>SUBJECT: <b>JOB</b>          CALC: <b>JOB</b>          DRAWN: <b>JOB</b>          CHECKED: <b>JOB</b></p>	<p>DATE: <b>12-1-05</b></p>	<p>DATE: <b>12-1-05</b></p>	<p>NO. OF SHEETS: <b>1659-12-4</b>  <b>SHEET 4 OF 4</b></p>

**EXHIBIT "C"**  
**PERCENTAGE OWNERSHIP ALLOCATION**

THE RITZ-CARLTON CLUB, ST. THOMAS  
 HELICONIA, IRIS, JASMINE, KAVA & LILY BUILDINGS  
 CONDOMINIUM DECLARATION - EXHIBIT C

UNIT NO.	UNIT TYPE	LOCATION	AREA	VALUE	% INTEREST	VOTES
1101	2br	End	1626	\$ 1,341,450.00	1.012289%	0.94143
1102	2br	Center	1626	\$ 1,341,450.00	1.012289%	0.94143
1103	2br	Center	1626	\$ 1,341,450.00	1.012289%	0.94143
1201	2br	End	1626	\$ 1,341,450.00	1.012289%	0.94143
1202	2br	Center	1626	\$ 1,341,450.00	1.012289%	0.94143
1203	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
1204	2br	End	1626	\$ 1,341,450.00	1.012289%	0.94143
1301	2br	End	1626	\$ 1,341,450.00	1.012289%	0.94143
1302	2br	Center	1626	\$ 1,341,450.00	1.012289%	0.94143
1303	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
1304	2br	End	1626	\$ 1,341,450.00	1.012289%	0.94143
1401	2br	End	1626	\$ 1,341,450.00	1.012289%	0.94143
1402	2br	Center	1626	\$ 1,341,450.00	1.012289%	0.94143
1403	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
1404	2br	End	1626	\$ 1,341,450.00	1.012289%	0.94143
1501	2br	End	1626	\$ 1,341,450.00	1.012289%	0.94143
1502	2br	Center	1626	\$ 1,341,450.00	1.012289%	0.94143
1503	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
1504	2br	End	1626	\$ 1,341,450.00	1.012289%	0.94143
1601	2br	End	1626	\$ 1,341,450.00	1.012289%	0.94143
1602	2br	Center	1626	\$ 1,341,450.00	1.012289%	0.94143
1603	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
1604	2br	End	1626	\$ 1,341,450.00	1.012289%	0.94143
2101	2br	End	1626	\$ 1,341,450.00	1.012289%	0.94143
2102	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
2103	2br	Center	1626	\$ 1,341,450.00	1.012289%	0.94143
2201	2br	End	1626	\$ 1,341,450.00	1.012289%	0.94143
2202	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
2203	2br	Center	1626	\$ 1,341,450.00	1.012289%	0.94143
2204	2br	End	1626	\$ 1,341,450.00	1.012289%	0.94143
2301	2br	End	1626	\$ 1,341,450.00	1.012289%	0.94143
2302	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
2303	2br	Center	1626	\$ 1,341,450.00	1.012289%	0.94143
2304	2br	End	1626	\$ 1,341,450.00	1.012289%	0.94143
2401	2br	End	1626	\$ 1,341,450.00	1.012289%	0.94143
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2504	2br	End	1626	\$ 1,341,450.00	1.012289%	0.94143
3101	2br	End	1626	\$ 1,341,450.00	1.012289%	0.94143
3102	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
3103	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
3104	2br	End	1626	\$ 1,341,450.00	1.012289%	0.94143
3201	2br	End	1626	\$ 1,341,450.00	1.012289%	0.94143
3202	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
3203	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
3204	2br	End	1626	\$ 1,341,450.00	1.012289%	0.94143
3301	2br	End	1626	\$ 1,341,450.00	1.012289%	0.94143
3302	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
3303	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
3304	2br	End	1626	\$ 1,341,450.00	1.012289%	0.94143
3401	2br	End	1626	\$ 1,341,450.00	1.012289%	0.94143
3402	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
3403	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702
3404	2br	End	1626	\$ 1,341,450.00	1.012289%	0.94143
3501	2br	End	1626	\$ 1,341,450.00	1.012289%	0.94143
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Doc# 2885812779

THE RITZ-CARLTON CLUB, ST. THOMAS  
 HELICONIA, IRIS, JASMINE, KAVA & LILY BUILDINGS  
 CONDOMINIUM DECLARATION - EXHIBIT C

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3503	3br	Center	1912	\$ 1,577,400.00	1.190343%	1.10702

Doc# 2885812779

**EXHIBIT "D"**  
**EASEMENT B-1**  
**AND EASEMENT A-4**

Doc# 2005012777

12/09/2005 8:34AM  
Official Records of  
ST THOMAS/ST JOHN  
WILMA D. HART SMITH  
RECORDER OF DEEDS



**Brian Moseley**  
**& Associates, Inc.**  
Land Surveyors & Consultants

DWG. No. 1659-5B

DWG. Date: 04-13-05

Easement "B-1"  
over Parcel No. 4-10  
Estate Nazareth  
No. 1 Red Hook Quarter  
St. Thomas, U.S. Virgin Islands

OLG No. \_\_\_\_\_

**BOUNDARY DESCRIPTION:**

Beginning at a point common to Parcel No. 4-9, Parcel No. 4-2, Parcel No. 4-10, and Easement "B-1", the line runs

N 75° 45' 47" E a distance of 14.00' over Parcel No. 4-10 to a point, thence

S 13° 19' 32" E a distance of 90.21' over Parcel No. 4-10 to a point, thence

Southeasterly an arc distance of 99.27' on a curve to the left having a radius of 218.00' over Parcel No. 4-10 to a point, thence

S 35° 56' 27" W a distance of 14.44' along Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

Northeasterly an arc distance of 75.70' on a curve to the right having a radius of 232.00' over Parcel No. 4-10 to a point, thence

Northerly an arc distance of 33.60' on a curve to the right having a radius of 232.00' along Parcel No. 4-9 to a point, thence

N 13° 19' 32" W a distance of 89.99' along Parcel No. 4-9 to the point of origin.

The bearings are correlated with A9-624-T003.

The area is 2,721 Square Feet, more or less.

Brian Moseley and Associates, Inc.

*Brian M. Moseley*  
Brian M. Moseley, PLS #502-LS



Doc# 200501277

12/09/2005 8:34AM  
Official Records of  
ST. THOMAS/ST. JOHN  
WILNO D. HART SMITH  
RECORDER OF DEEDS



**Brian Moseley**  
**& Associates, Inc.**  
Land Surveyors & Consultants

DWG. No. 1659-5B

DWG. Date: 04-13-05

Utility Easement "A-4"  
over Parcel No. 4-10  
Estate Nazareth  
No. 1 Red Hook Quarter  
St. Thomas, U.S. Virgin Islands

OLG No. \_\_\_\_\_

**BOUNDARY DESCRIPTION:**

Beginning at a point common to R.O.W. Parcel No. 4-4, Parcel No. 4-2, Parcel No. 4-10, and Utility Easement "A-4", the line runs

N 71° 28' 00" E a distance of 20.24' along Parcel No. 4-2 to a point, thence

S 27° 26' 38" E a distance of 93.05' over Parcel No. 4-10 to a point, thence

S 84° 12' 51" W a distance of 21.52' along Remainder Parcel No. 4 (Southeastern Portion) to a point, thence

N 27° 26' 38" W a distance of 88.24' along R.O.W. Parcel No. 4-4 to the point of origin.

The bearings are correlated with A9-624-T003.

The area is 1,812 Square Feet, more or less.

Brian Moseley and Associates, Inc.

*Brian M. Moseley*  
Brian M. Moseley, PLS #502-LS



Doc# 2005012779





# EXHIBIT 3

Doc# 2006007164  
# Pages 0  
07/18/2006 3:08PM  
Official Records of  
ST THOMAS/ST JOHN  
WILMA O. HART SMITH  
RECORDER OF DEEDS  
Fees \$36.50

This instrument prepared by  
and return to:  
Mark S. Lieblich, Esq.  
Marriott Ownership Resorts, Inc.  
6649 Westwood Boulevard  
Orlando, Florida 32821-6090  
(407) 206-6000

**FOURTH AMENDMENT TO  
SUPPLEMENTARY DECLARATION OF CONDOMINIUM  
FOR THE CLUB AT GREAT BAY CONDOMINIUM ST. THOMAS,  
U.S. VIRGIN ISLANDS**

THIS FOURTH AMENDMENT TO SUPPLEMENTARY DECLARATION FOR THE CLUB AT GREAT BAY CONDOMINIUM (the "Fourth Amendment to Supplementary Declaration") is made effective the 14th day of June, 2006, by RC HOTELS (VIRGIN ISLANDS), INC., a corporation organized and existing under the laws of the U.S. Virgin Islands, whose principal office is situated at Parcel No. 6 Estate Nazareth, St. Thomas, Virgin Islands, hereinafter referred to as the "Declarant":

WHEREAS, by Declaration Establishing a Plan for Condominium Ownership of Parcel Nos. 4-2 and 4-3 Estate Nazareth, No. 1 Red Hook Quarter, St. Thomas, U.S. Virgin Islands, Pursuant to Chapter 33, Title 28 of the Virgin Islands Code made on May 10, 2002, and recorded in the Office of the Recorder of Deeds for St. Thomas and St. John on May 31, 2002, as Document No. 2002002741, as subsequently expanded and amended (collectively, together with all corrective instruments and other amendments related thereto, the "Declaration"), the Declarant submitted the land described therein to the provisions of Chapter 33, Title 28, Virgin Islands Code, known also as the "Condominium Act of the Virgin Islands", which condominium is known as Great Bay Condominium; and

WHEREAS, the Declaration was supplemented by that certain Supplementary Declaration of Condominium for The Club at Great Bay Condominium (the "Club Declaration"), St. Thomas, U.S. Virgin Islands made by the Declarant on May 10, 2002, and recorded in the Office of the Recorder of Deeds for St. Thomas and St. John on May 31, 2002, as Document No. 2002002742, as subsequently expanded and amended (collectively, together with all corrective instruments and other amendments related thereto, the "Supplementary Declaration") and which Supplementary Declaration created the Residence Interests in the Condominium; and

WHEREAS, Declarant, by the Fifth Amendment recorded simultaneously herewith, has amended the Declaration pursuant to Article 19 thereof in order to submit to the Condominium the land, building and improvements relating to the Phase described therein as containing Building G;

Doc# 2006007164

NOW, THEREFORE, pursuant to Article XVII thereof, the Supplementary Declaration is hereby amended in the following respects only:

1. The property that is hereby submitted to the condominium form of ownership under this Fourth Amendment to Supplementary Declaration of Great Bay Condominium for the Club at Great Bay Condominium (the "Fourth Amendment to Supplementary Declaration"), consists of certain Residences in the Condominium which were made subject to the Declaration pursuant to the Fifth Amendment to Condominium Declaration, and are hereby becoming subject to the Club Declaration, including becoming subject to certain time parameters pursuant to Article V of the Club Declaration; the Residence Interests are more particularly described in **Exhibit "A"** attached hereto and by this reference made a part hereof, together with the covenants, conditions and restrictions set forth in the Declaration. No other property is being submitted as Residence Interests at this time.

2. Annexed hereto and made a part hereof as **Exhibit "A"** is a list of all such Residence Interests in Building G which will constitute the sixth (6<sup>th</sup>) phase of the Residence Interests and Common Elements subject to the Club Declaration as amended by this Fourth Amendment to Supplementary Declaration (collectively with those contained in Buildings A, B, C, D, and H referred to hereinafter as the "Club"), their location, identification numbers for each Residence Interest, and approximate areas or number of rooms in each Residence (all as shown on the floor plans attached as Exhibit "B" to the Fifth Amendment to Condominium Declaration).

3. The percentage of ownership is hereby modified with the submission of this Phase Six (6) Property and Exhibit "A" previously attached to and recorded with the Club Declaration is hereby replaced by the attached **Exhibit "A"**.

4. Section 5.6, Legal Description of Residence Interest, is hereby modified to also include the following:

Residence Interests in each of the Building G Residences will be described by reference to one of two (2) Calendars. If the legal description for the Residence Interest is in the format previously set forth in the Club Declaration, then reference is made to the Calendar entitled Building G Rotating Week Calendar. If the legal description for the Residence Interest is in the format set forth below, then reference is made to the Calendar entitled Building G Fixed Week Calendar.

The legal description for a Residence Interest in Building G may be in the following format, which will indicate that reference is made to the Calendar entitled Building G Fixed Week Calendar:

Residence Interest: "X weeks Y" (where X is the Residence number and Y identifies the three (3) weeks of Reserved Allocation ) consisting of said Condominium Unit in The Club at Great Bay Condominium, as defined and described in the Club Declaration of Condominium thereof, filed for record in the Recorder's Office for the District of St. Thomas and St. John, Virgin Islands of the United States as Document No. 2002002742, as subsequently

expanded and amended, together with the exclusive right to possession and occupancy of the specific Residence Interest owned (e.g., two or three bedroom type) during the Reserved Allocation subject to reservation by the Member pursuant to the Reservation Procedures and together with a minimum of twenty-one days of use in accordance with the Residence Documents.

Any legal description substantially in the form provided above or which is otherwise sufficient to identify the Residence Interest shall be good and sufficient for all purposes to sell, convey, transfer and encumber or otherwise affect a Residence Interest including an undivided ownership interest in all Common Elements, Limited Common Elements and easements and appurtenances thereto.

5. The twelve (12) Residences which are the subject of this amendment are Two Bedroom Suites and, as such, all Owners of Residence Interests therein shall in addition to being Members of the Condominium Association, be mandatory members of the Neighborhood Association, whose contemplated sole purpose shall be to own and operate Commercial Unit CU-1, and which may provide certain services for the exclusive benefit of the occupants from time to time of the Two Bedroom Suites, whether or not such occupants are Members of the Neighborhood Association. More particularly, and in accordance with the separate organizational and governing documents of the Neighborhood Association, its members shall control the Neighborhood Association and be responsible for all costs and expenses related to the ownership and operation of the Commercial Unit CU-1, including but not limited to any services that it may elect to provide.

In addition to the lien in favor of the Members Association against each Residence or Residence Interest, as applicable, for any unpaid assessments and for interest accruing thereon, together with related charges, as set forth in the Declaration, all Owners of Residences that are designated as a Two Bedroom Suite shall, in addition, be subject to a lien in favor of the Neighborhood Association to secure any unpaid assessments, fees or special charges imposed on members of the Neighborhood Association pursuant to the Bylaws of the Neighborhood Association, which shall include, but not be limited to, interest, costs and attorney's fees incurred in the collection of a delinquent payment or enforcement of a lien. The Neighborhood Association lien shall be effective from and after recording a claim of lien in the Public Records of the U.S. Virgin Islands stating the legal description of the Residence (or Residence Interest, as applicable) the name of the Member of record, the amount claimed to be due and the due dates. The lien shall continue in effect until all sums secured by the lien shall have been fully paid or until such time as is otherwise permitted by law. Such claims of lien shall be signed and verified by an officer of the Neighborhood Association, or by an authorized agent of the Neighborhood Association, e.g., officer or designated employee of the manager retained by the Neighborhood Association. Upon full payment, the party making payment shall be entitled to a recordable satisfaction of lien, to be prepared and recorded at such party's expense. All Neighborhood Association liens shall be subordinate to any Members Association lien and any mortgage recorded prior to the date of recording the claim of lien in favor of the Neighborhood Association, and all such liens may be foreclosed by suit brought in the name of the

Neighborhood Association in the same manner as a foreclosure of a mortgage on real property, or as otherwise provided by applicable law. The Neighborhood Association may also sue to recover a money judgment for unpaid assessments without thereby waiving any claim of lien.

In the event a Mortgagee holding a first priority mortgage shall obtain title to a Residence Interest as a result of the foreclosure of such mortgage, or in the event such Mortgagee shall obtain title to a Residence Interest as the result of a conveyance in lieu of foreclosure of such mortgage, such Mortgagee shall not be liable, except to the extent required under the laws of the U.S. Virgin Islands, for that share of the Neighborhood Association expenses or assessments chargeable to the Residence Interest, or the member thereof, which became due prior to the acquisition of title by such Mortgagee.

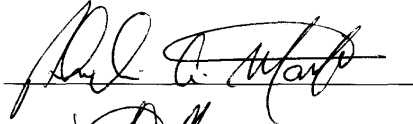

6. Residence Interest Furnishings of all Two Bedroom Suites, meaning all furniture, appliances, moveable equipment, utensils, carpeting, accessories, and other personal property located within a Two Bedroom Suite Residence Interest, are owned by the Members Association and administered by the Club Manager for the benefit of the Members. A portion of the Residence Interest Furnishings in the Two Bedroom Suites was previously utilized in connection with the operation of the adjacent Ritz-Carlton Hotel. In order to compensate for any reduction in the remaining useful life of such furnishings, Declarant has prefunded a portion of the reserves for the Residence Interest Furnishings that are located in the Two Bedroom Suites.

7. In all other respects the Club Declaration, remains unchanged, and all provisions relating to the Club therein now applies to the current Club Property which is part of the Supplementary Declaration of Condominium that includes the Phase Six (6) Property.

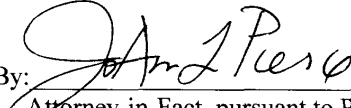
IN WITNESS WHEREOF, the undersigned being the Declarant herein, has caused its seal to be hereunto affixed and these presents to be signed by its officer thereunder duly authorized the day and year first above written.

RC HOTELS (VIRGIN ISLANDS), INC.

WITNESSES:

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

By: The Ritz-Carlton Club, St. Thomas, Inc., a U.S. Virgin Islands corporation

By:   
\_\_\_\_\_  
Attorney-in-Fact, pursuant to Power of Attorney dated April 29, 2002, and Recorded on May 31, 2002, as Doc. No. 2002002737  
Print Name: JoAnn L. Pierce  
As its: Vice President

TERRITORY OF THE VIRGIN ISLANDS )  
DIVISION OF ST. THOMAS & ST. JOHN ) ss:

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of June, 2006, by JoAnn L. Pierce as Attorney-in-Fact for The Ritz-Carlton Club, St. Thomas, Inc., a U.S. Virgin Islands corporation, on behalf of RC Hotels (Virgin Islands), Inc., a U.S. Virgin Islands corporation.

WITNESS my hand and seal this 17<sup>th</sup> day of June, 2006.

  
\_\_\_\_\_  
Notary Public

Fairly Attidore-Smith, Notary Public  
My Commission Exp. September 16, 2009  
NP-095-05  
District of St. Thomas/St. John

**FILED**

August 16, 2022 03:24 PM  
SCT-Civ-2022-0002  
VERONICA HANDY, ESQUIRE  
CLERK OF THE COURT

WITNESSES:

"Organizer"

[Signature]  
 Print Name: Fairly Attidore-Smith  
[Signature]  
 Print Name: Phyllis A. Monsanto

THE RITZ-CARLTON CLUB, ST. THOMAS,  
 Inc., a U.S. Virgin Islands corporation

By: [Signature]  
 Print Name: John L. Pierce  
 As its: Vice President

TERRITORY OF THE VIRGIN ISLANDS )  
DIVISION OF ST. THOMAS & ST. JOHN ) ss:

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of June, 2006, by John L. Pierce, as \_\_\_\_\_ of The Ritz-Carlton Club, St. Thomas, Inc., a U.S. Virgin Islands corporation, on behalf of said corporation.

WITNESS my hand and seal this 6<sup>th</sup> day of June, 2006.

[Signature]  
Notary Public

Fairly Attidore-Smith, Notary Public  
My Commission Exp. September 16, 2009  
NP-095-05  
District of St. Thomas/St. John

Doc# 2006007164



**EXHIBIT "A"**  
**PERCENTAGE OWNERSHIP ALLOCATION**

Doc# 2006007164



**THE RITZ-CARLTON CLUB, ST. THOMAS  
GARDENIA, HELICONIA, IRIS, JASMINE, KAVA & LILY BUILDINGS  
SUPPLEMENTARY DECLARATION - EXHIBIT A**

UNIT NO.	UNIT TYPE	LOCATION	AREA	BASIS	% INTEREST	RESIDENCE	VALUE	% INTEREST	VOTES
						INTERESTS			
4101 3br	End		1912	\$ 1,577,400.00	1.051572%	# 1 - 12	\$ 131,450.00	0.087631%	0.0929
4102 3br	Center		1912	\$ 1,577,400.00	1.051572%	# 1 - 12	\$ 131,450.00	0.087631%	0.0929
4103 3br	Center		1912	\$ 1,577,400.00	1.051572%	# 1 - 12	\$ 131,450.00	0.087631%	0.0929
4104 3br	Center		1912	\$ 1,577,400.00	1.051572%	# 1 - 12	\$ 131,450.00	0.087631%	0.0929
4105 2br	End		1626	\$ 1,341,450.00	0.894276%	# 1 - 12	\$ 111,787.50	0.074523%	0.0790
4201 3br	End		1912	\$ 1,577,400.00	1.051572%	# 1 - 12	\$ 131,450.00	0.087631%	0.0929
4202 3br	Center		1912	\$ 1,577,400.00	1.051572%	# 1 - 12	\$ 131,450.00	0.087631%	0.0929
4203 3br	Center		1912	\$ 1,577,400.00	1.051572%	# 1 - 12	\$ 131,450.00	0.087631%	0.0929
4204 3br	Center		1912	\$ 1,577,400.00	1.051572%	# 1 - 12	\$ 131,450.00	0.087631%	0.0929
4205 2br	End		1626	\$ 1,341,450.00	0.894276%	# 1 - 12	\$ 111,787.50	0.074523%	0.0790
4301 3br	End		1912	\$ 1,577,400.00	1.051572%	# 1 - 12	\$ 131,450.00	0.087631%	0.0929
4302 3br	Center		1912	\$ 1,577,400.00	1.051572%	# 1 - 12	\$ 131,450.00	0.087631%	0.0929
4303 3br	Center		1912	\$ 1,577,400.00	1.051572%	# 1 - 12	\$ 131,450.00	0.087631%	0.0929
4304 3br	Center		1912	\$ 1,577,400.00	1.051572%	# 1 - 12	\$ 131,450.00	0.087631%	0.0929
4305 2br	End		1626	\$ 1,341,450.00	0.894276%	# 1 - 12	\$ 111,787.50	0.074523%	0.0790
4401 3br	End		1912	\$ 1,577,400.00	1.051572%	# 1 - 12	\$ 131,450.00	0.087631%	0.0929
4402 3br	Center		1912	\$ 1,577,400.00	1.051572%	# 1 - 12	\$ 131,450.00	0.087631%	0.0929
4403 3br	Center		1912	\$ 1,577,400.00	1.051572%	# 1 - 12	\$ 131,450.00	0.087631%	0.0929
4404 3br	Center		1912	\$ 1,577,400.00	1.051572%	# 1 - 12	\$ 131,450.00	0.087631%	0.0929
4405 2br	End		1626	\$ 1,341,450.00	0.894276%	# 1 - 12	\$ 111,787.50	0.074523%	0.0790
5101 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
5102 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
5103 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
5201 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
5202 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
5203 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
5301 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
5302 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
5303 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
5401 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
5402 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
5403 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
6101 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
6102 2br - Suites	Center		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
6103 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
6201 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
6202 2br - Suites	Center		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
6203 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
6301 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
6302 2br - Suites	Center		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
6303 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
6401 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
6402 2br - Suites	Center		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
6403 2br - Suites	End		1552	\$ 1,280,400.00	0.853577%	# 1 - 12	\$ 106,700.00	0.071131%	0.0754
CU-1 Commercial Unit			2573	\$ 2,122,725.00	1.415112%	#1	\$ 2,122,725.00	1.415112%	1.5000
24 Unit 2-Bedroom Suites			37,248	30,729,600	20.485857%	12 X	2,560,800	1.707155%	1.8096
45 Unit 2-Bedroom Allocation			73,170	60,365,250	40.242434%	12 X	5,030,438	3.353536%	3.5547
36 Unit 3 Bedroom Allocation			68,832	56,786,400	37.856597%	12 X	4,732,200	3.154718%	3.3440
1 Commercial Unit			2,573	2,122,725	1.415112%	1X	2,122,725	1.415112%	1.5000
106 Unit Allocation			181,823	150,003,975	100.000000%	12 X	\$ 14,446,163	9.630520%	10.2084

# EXHIBIT 4

12/30/2008 2:59PM  
Official Records of  
ST THOMAS/ST JOHN  
WILMA G. HART SMITH  
RECORDER OF DEEDS

**CONDOMINIUM DEED**

THIS INDENTURE is made the 20 day of December, 2008 by and between RC Hotels (Virgin Islands), Inc., a corporation organized and existing under the laws of the Virgin Islands of the United States, whose address is c/o The Ritz-Carlton Club, St. Thomas, 6649 Westwood Boulevard, Orlando Florida 32821 (hereinafter "Grantor"), and The Neighborhood Association, Inc., a corporation not for profit organized and existing under the laws of the Virgin Islands of the United States, whose address is 6900 Great Bay, St. Thomas, U.S. Virgin Islands 00802 2552 (hereinafter "Grantee"),

WITNESSETH: That the Grantor in consideration of the sum of TEN U.S. DOLLARS (U.S. \$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby grant to Grantee and Grantee's successors and assigns, the real property described as follows:

The Unit known as CU-1 (hereinafter the "Unit") in the Great Bay Condominium, at the property known as Parcel Nos. 4-2, 4-3, 4-4, 4-5, 4-6, 4-7, 4-8, 5-33A, 4-10, Remainder Parcel No. 4 (Southeastern Portion) Estate Nazareth, No. 1 Red Hook Quarter, St. Thomas, U.S. Virgin Islands and Remainder Parcel No. 4 (Southwestern Portion) Estate Nazareth, No. 2 Red Hook Quarter, St. Thomas, U.S. Virgin Islands, designated and described as such in the Declaration of Condominium for Great Bay Condominium Declaration and the Supplementary Declaration of Condominium for the Club at Great Bay Condominium (collectively, the "Declaration") respectively establishing plans for condominium ownership and interval ownership of said buildings and said property, made by RC Hotels (Virgin Islands), Inc. under the Condominium Act of the Virgin Islands of the United States (Chapter 33, Title 28, Virgin Islands Code), dated May 10, 2002, and recorded in the Office of the Recorder of Deeds for St. Thomas and St. John, U.S. Virgin Islands, on May 31, 2002, as Document Nos. 2002002741 and 2002002742, respectively, as subsequently expanded and amended.

TOGETHER WITH the undivided percentage interest in the common areas and facilities of the Great Bay Condominium (hereinafter the "Common Elements"), as the same may be subsequently amended from time to time, including all easements appurtenant thereto;

TOGETHER ALSO WITH the appurtenances and all the estate and rights of the Grantor in and to the Unit;

TOGETHER ALSO WITH all fixtures and permanent equipment used or useful in connection with the above-described Unit of which the Unit is appurtenant and now or hereafter attached to or installed therein.

The above-described Unit, together with the appurtenances, rights, and other interests hereinabove described in connection with the Unit now or hereafter vested or attached to or installed in the Unit to which the Unit is appurtenant, are hereinafter collectively referred to as the "Property".

SUBJECT TO AND WITH THE BENEFIT OF U.S. Virgin Islands zoning laws and regulations, real property taxes for year 2006 and for subsequent years thereafter, covenants, restrictions and easements of record, the provisions of the Declaration and of the Bylaws of Great Bay Condominium Owners Association, Inc. and The Neighborhood Association, Inc. as amended from time to time by instruments recorded in the Office of the Recorder of Deeds for St. Thomas and St. John, U.S. Virgin Islands, which provisions, together with any amendments thereto, shall constitute covenants running with the land and shall bind any person having at any

time any interest or estate in the Property, as though such provisions were recited and stipulated at length herein;

BY ACCEPTANCE AND RECORDING OF THIS DEED, THE GRANTEE ACKNOWLEDGES THAT THIS CONVEYANCE IS SUBJECT TO GRANTOR RESERVING THE RIGHT TO APPROVE ANY USAGE OF THE UNIT BY GRANTEE SO LONG AS GRANTOR OR ONE OF ITS AFFILIATES HAS AN EXECUTED AGREEMENT TO MANAGE GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC. OR THE NEIGHBORHOOD ASSOCIATION, INC. (the "MANAGEMENT PERIOD"). PRIOR TO GRANTEE CHANGING THE CURRENT USAGE OF THE UNIT AS A MEMBERS LOUNGE FOR MEMBERS WHO OWN RESIDENTIAL INTERESTS IN BUILDING G AND BUILDING H OF GREAT BAY CONDOMINIUM DURING THE MANAGEMENT PERIOD, GRANTEE SHALL OBTAIN THE WRITTEN APPROVAL OF GRANTOR WHICH GRANTOR MAY GRANT OR WITHHOLD IN ITS SOLE DISCRETION. IN THE EVENT THAT THE GRANTEE CHANGES THE USE OF THE PROPERTY WITHOUT THE GRANTOR'S CONSENT, THE GRANTOR SHALL HAVE THE IMMEDIATE RIGHT TO SEEK INJUNCTIVE RELIEF, SPECIFIC PERFORMANCE AND DAMAGES AND THE GRANTOR'S ATTORNEYS' FEES AND COSTS FOR SUCH AN ACTION SHALL BE PAID IN FULL BY THE GRANTEE.

TO HAVE AND TO HOLD the Property conveyed hereby unto Grantee, Grantee's successors and assigns, in fee simple absolute forever.

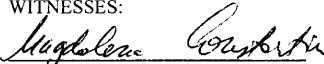
AND THE GRANTOR WARRANTS that the Property is free from encumbrances suffered or created by acts of Grantor, will forever warrant and defend the title to the Property against all persons lawfully claiming the same from, through or under Grantor.

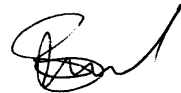
The value of the Property herein conveyed for Transfer Tax and Recording Fee purposes is \$2,122,725.00.

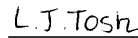
IN WITNESS WHEREOF, the Grantor has duly executed this Condominium Deed the day and year first above written.

RC HOTELS (VIRGIN ISLANDS), INC.

WITNESSES:

  
SIGNATURE OF WITNESS  
MAGDALENA CONSTANTIN  
PRINTED NAME OF WITNESS

  
By: \_\_\_\_\_  
Nigel Van Wijk  
Title: Vice President

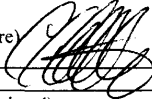
  
SIGNATURE OF WITNESS  
LESLEY JANE TOSH  
PRINTED NAME OF WITNESS

Doc# 2008012283  
# Pages 4  
12/30/2008 2:59PM  
Official Records of  
ST THOMAS/ST JOHN  
WILMA G. HART SMITH  
RECORDER OF DEEDS  
Fees \$65819.75

TERRITORY OF THE U.S. VIRGIN ISLANDS )  
 ) SS.  
DISTRICT OF ST. THOMAS & ST. JOHN )

The foregoing was acknowledged before me this 20 day of DEC  
2008, by NIGEL VAN WIJK as VICE PRESIDENT of RC Hotels (Virgin Islands), Inc. on  
behalf of said corporation.

(Notary Signature)



(NOTARY SEAL)

(Notary Name Printed)  
NOTARY PUBLIC

Commission No. June 21<sup>st</sup> 2012

WHEN RECORDED RETURN TO:  
Marriott Vacation Club  
6649 Westwood Boulevard  
Third Floor  
Orlando, Florida 32821  
ATTN: Garth Greene – Legal Department



Book:  
Pages: 0000  
Doc# 2008012283  
Filed & Recorded  
12/30/2008 2:59PM  
WILMA D. HART SMITH  
RECORDER OF DEEDS  
ST THOMAS/ST JOHN  
RECORDING FEE \$ 2,134.00  
DEED DOC STAMP 3.0 \$ 63,681.75  
PER PAGE FEE \$ 4.00



GOVERNMENT OF  
THE VIRGIN ISLANDS OF THE UNITED STATES  
CHARLOTTE AMALIE, ST. THOMAS, V.I. 00802

----0----

Office of the Lieutenant Governor

TAX CLEARANCE LETTER

TO: THE RECORDER OF DEEDS

FROM: OFFICE OF THE TAX COLLECTOR

IN ACCORDANCE WITH Title 28, SECTION 121 AS AMENDED, THIS IS

CERTIFICATION THAT THERE ARE NO REAL PROPERTY TAXES

OUTSTANDING FOR PARCEL NO. 1-07803-0414-00

LEGAL DESCRIPTION TRACT # 4 CONSOLIDATED NAZ. NO. 1 RED HOOK QTR.

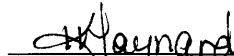
OWNER'S NAME RC HOTEL VIRGIN ISLAND INC.

TAXES RESEARCHED UP TO AND INCLUDING 2005.

RESEARCHED BY:

Karen Maynard, Tax Collector I

SIGNATURE:



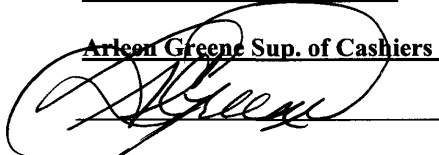
DATE:

Monday, December 29, 2008

VERIFIED BY:

Arleon Greene Sup. of Cashiers STT/STJ

SIGNATURE:



DATE:

Monday, December 29, 2008

Doc# 2008012283



# EXHIBIT 5

Doc# 2014000751  
# Pages 2  
02/05/2014 1:55PM  
Official Records of  
ST THOMAS/ST JOHN  
ERICA DOWER, M.P.A.  
RECORDER OF DEEDS  
Fees \$27.00

WAIVER OF DEED RESTRICTIONS

THIS WAIVER OF DEED RESTRICTIONS is made this 24 day of January, 2014 by RC Hotels (Virgin Islands), Inc. (the "Grantor"), with a registered address of Dudley, Topper and Feuerzeig, LLP, Law House, 1000 Fredericksberg Gade, P.O. Box 756, St. Thomas, Virgin Islands.

WHEREAS, the Grantor by that certain Condominium Deed dated December 20, 2008, from the Grantor to The Neighborhood Association, Inc., a U.S. Virgin Islands not-for-profit corporation ("Grantee") filed with the Office of the Recorder of Deeds for the District of St. Thomas and St. John on December 30, 2008 as Document No. 2008012283 (the "Deed") conveyed Condominium Unit CU-1 located at Great Bay Condominium (the "Unit") as further defined in the Deed to the Grantee; and

WHEREAS, the Grantor set forth certain restrictions in the Deed prohibiting Grantee from changing the use of the Unit as a Member's lounge without the prior written approval of Grantor (the "Deed Restrictions"); and

WHEREAS, Grantee has requested, and Grantor has agreed, to waive the recorded Deed Restrictions;


NOW, THEREFORE, for good and valuable consideration, the receipt of which is acknowledged, the Grantor hereby waives the Deed Restrictions, and any right that Grantor may have to enforce the Deed Restrictions.

This Waiver of Deed Restrictions shall run with the land, for the benefit of Grantee and Grantee's successors and assigns.

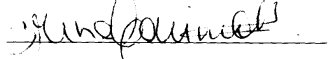

IN WITNESS WHEREOF, Grantor has executed this Waiver of Deed Restrictions as of the date forth set forth above.

GRANTOR:

RC HOTELS (VIRGIN ISLANDS), INC.

By:   
Name: Peter B. Cole  
Title: President

WITNESSES: (TWO REQUIRED)

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Doc# 2014000751

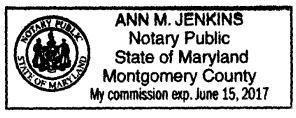
A.000386

STATE OF Maryland  
COUNTY OF Montgomery ss:

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of January, 2014, by Peter Cole as the duly authorized President of RC Hotels (Virgin Islands), Inc. on behalf of said corporation.

Ann M. Jenkins  
Notary Public

My Commission Expires: June 15, 2017  
(SEAL)



JOC# 2014000751

# EXHIBIT 6

05/31/2002 12:52:29 PM  
Filed & Recorded in  
Official Records of  
ST THOMAS/ST JOHN  
WILMA D. HART SMITH  
RECORDER OF DEEDS

**SUPPLEMENTARY DECLARATION OF CONDOMINIUM**

**FOR**

**THE CLUB AT GREAT BAY CONDOMINIUM**

**ST. THOMAS, U.S. VIRGIN ISLANDS**

**Doc# 2002002742**

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 FOR  
 THE CLUB AT GREAT BAY CONDOMINIUM**

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**EXHIBITS**

- A Legal Description of Residences and Listing of Residence Interests; Percentage Ownership Allocation in the Common Elements and for Voting Purposes
- B Affiliation Agreement



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Filed & Recorded in  
Official Records of  
ST THOMAS/ST JOHN  
WILMA O. HART SMITH  
RECORDER OF DEEDS

PURSUANT TO TITLE 28, CHAPTER 33 OF THE U.S. VIRGIN ISLANDS CODE

\* \* \*

SUPPLEMENTARY DECLARATION OF CONDOMINIUM

FOR

THE CLUB AT GREAT BAY CONDOMINIUM

ST. THOMAS, U.S. VIRGIN ISLANDS

The undersigned, RC Hotels (Virgin Islands), Inc., a US Virgin Islands corporation, its successors and assigns, whose address is 6900 Great Bay, St. Thomas, US VI 00802 ("Declarant"), being the sole owner of record of fee simple title of record to those certain lands located and situate in Estate Nazareth, Red Hook Quarter, St. Thomas, U.S. Virgin Islands, described as "Property" in the Declaration of Great Bay Condominium, recorded as Document No. \_\_\_\_\_, of the office of the Recorder of Deeds for St. Thomas and St. John, in St. Thomas, U.S. Virgin Islands, and as further limited and described hereinafter, as successor in interest to Marriott International Hotels, Inc., by deed dated April 11, 2002 and recorded in \_\_\_\_\_, does hereby submit fee simple title to the property described in Section 1.2 of Article I below together with the improvements thereon to the condominium form of ownership in accordance with the provisions of Chapter 33, U.S. Virgin Islands Code, for the purpose of effectuating an interval form of unit ownership ("Residence Interest") with respect to such Units ("Residences") as are listed in Exhibit "A" attached to this Supplementary Declaration of Condominium ("Club Declaration") and as may be further supplemented or amended from time to time, attached hereto and by this reference incorporated herein (hereinafter, "Exhibit "A"") and subject to the following provisions:

ARTICLE I

NAME, LEGAL DESCRIPTION AND FORM OF RESIDENCE INTEREST OWNERSHIP PLAN

1.1 Name. The name by which this condominium is to be identified is The Club at Great Bay Condominium (the "Condominium").

1.2 Legal Description. The property that is hereby submitted to the condominium form of ownership ("Residence Interests") under this Club Declaration consists of certain Residences in the Condominium which are subject to the Declaration are being made subject to the Club Declaration including becoming subject to certain time parameters pursuant to Article V herein; the Residence Interests are more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof, together with the covenants, conditions and restrictions set forth in the Declaration of Condominium for Great Bay Condominium as may be amended from time to time ("the Declaration") filed in the Office of the Recorder of Deeds ("Recorder's Office") for St. Thomas and St. John, in St. Thomas, U.S. Virgin Islands Recorder's Office as Document No. \_\_\_\_\_, of the Deed Records and with the easements more specifically described in Article IV herein. No other property is being submitted as Residence Interests at this time, but Declarant reserves the right to add individual Residence Interests or phases of Residence Interests at later times when situated in and located on all or a portion of the property described in the Declaration.

1.3 The Residence Interests:

(a) Annexed hereto and made a part hereof as Exhibit "A" is a list of all such Residence Interests in Building A which will constitute the first phase of the Residence Interests and Common Elements subject to this Club Declaration ("Club"). The location, identification numbers, approximate areas or number of rooms

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in each Residence to which each Residence Interest is appurtenant (are shown on the floor plans of Building A, attached as Exhibit A to the Declaration filed of record in the Recorder's Office as Document No.

\_\_\_\_\_). The Common Areas and Limited Common Areas to which each Residence has access is also shown thereon. As the Declarant adds phases to the Club, the Declarant shall from time to time refer to information contained in the Declaration and amend Exhibit "A" to this Club Declaration so as to disclose the foregoing information for the additional phases, until all phases (with a total anticipated number of up to 960 (nine hundred sixty) Residence Interests (or more or fewer should the Declarant so determine in its sole discretion)) have been added and made subject to this Club Declaration.

(b) Notwithstanding anything contained in this Article I to the contrary, the Members Association shall have the right, exercisable at any time and from time to time, to install, maintain and replace, as Common Expenses, such decorations, fixtures and coverings (including, without limitation, painting, finishing, wall papering, carpeting, pictures, mirrors, shelving and lighting fixtures) on the surfaces of the interior walls, ceilings and floors of one or more Residences provided that no such installation shall impair the structural integrity of any Residence, or of the Building.

(c) Each Residence Interest includes the balcony/terrace, if any, associated with each Residence to which such Residence Interest is appurtenant as a Limited Common Element.

(d) With respect to adding to the Club future Residence Interests in Building A, and other phases, each Member hereby appoints the Declarant as such Member's attorney-in-fact, which appointment, coupled with an interest, is irrevocable, to increase the number of Residence Interests in the Club and to change the percentage of ownership interest as more specifically set forth in Section 1.6 of Article I, to change the number and configuration of rooms within a Residence, and to amend Exhibit "A" and other Exhibits accordingly to show such changes.

1.4 Common Areas and Facilities. The common areas and facilities ("Common Elements") consist of the entire Condominium Property except for the Residences, and the Limited Common Areas set forth below, including all other parts of the Building A, and including, without limitation, the following:

- (a) The land on which the Building is erected;
- (b) All roadways, walkways, and parking areas on the Property;
- (c) All roofs, foundations, columns, beams and supports;
- (d) All exterior walls of the Buildings; all walls and partitions separating Residences from steps, stairways, landing platforms, or from other common areas; all floors and ceilings;
- (e) Pump rooms, meter rooms and other similar facilities; all landscaping, and all exterior lighting;
- (f) All central and appurtenant installations for services such as sewerage, power, light and telephone, gas, potable and salt water (including all pipes, ducts, wires, cables, and conduits used in common areas or in Residences) and all other mechanical equipment spaces, including (i) the underground and overhead electrical distribution system; (ii) the rainwater and gray water collection system, including cisterns, and the piping and distribution systems; (iii) the sewerage piping system; (iv) the potable water system, including pressure tanks, pumps and piping to Residences; and (v) the sewerage piping system.
- (g) All other parts of the Property and all apparatus and installations existing in the Buildings or on the Property for common use or necessary or convenient to the existence, maintenance or safety of the Property.

Maintenance of all Common Areas is a common expense of all Owners and the Association.

1.5 Limited Common Elements. Limited Common Elements are those "common areas and facilities" (as defined in Chapter 33 of Article 28 of the USVI Code) reserved exclusively for the use of one or more Condominium Units served thereby to the exclusion of others as follows:

(a) Entry hallways and passages between common areas and walkways to individual Residences.

(b) Any terrace and balcony physically accessible only through the interior of an individual Residence to the exclusion of all others.

Maintenance of all Limited Common Areas is a common expense of the Association.

1.6 Determination of Percentage Ownership Allocation of Common Elements. The percentages of ownership of the respective Residence Interests in the Common Elements have been determined upon the basis of the proportion which the value of each Residence Interest bears to the value of the Club, and such values and percentages are set forth in Exhibit "A." Inasmuch as the Club is being constructed in phases, the percentage of ownership attributed to a Residence Interest in the Common Elements will diminish as each additional phase of the Club is added, and as the value of the Property increases pro tanto. Accordingly, each Member hereby appoints the Declarant as such Member's attorney-in-fact, which appointment, coupled with an interest, is irrevocable, to amend Exhibit "A" from time to time so as to show the changes in each respective percentage share attached to each Residence Interest in the Common Elements until all possible phases of the Club have been added to the Club, at which time Exhibit "A" will be amended one last time to indicate the final computation of percentage ownership share of each Residence Interest in the Common Elements. The Declarant, individually and as attorney-in-fact for all of the owners shall have rights to amend the percentage ownership to the fullest extent under the law and such amendments may be made without the consent of any Member.

1.7 Relation of this Club Declaration to the Declaration. The provisions of this Club Declaration shall apply to all Residence Interests established hereunder and address primarily issues with respect to Residence Interests. The provisions of the Declaration apply primarily to all Residences created thereunder and also shall apply to the extent applicable to all Residence Interests. In the event of an inconsistency or conflict between provisions of this Club Declaration and provisions of the Declaration with respect to Residence Interests and the rights, duties, and obligations of Members, then the provisions of this Club Declaration shall control.

## **ARTICLE II DEFINITIONS**

The terms used in this Club Declaration and in its exhibits shall be in accordance with the laws of the U.S. Virgin Islands and shall be defined as follows unless the context expressly requires otherwise:

2.1 Affiliation Agreement means the agreement among the Declarant, the Members Association, the Program Manager, the Organizer and the Club Manager which provides Members with the right to make reservations for use of a Residence pursuant to an Allocation or otherwise make use of a Residence at the Club or other Member Club and to otherwise participate in the Membership Program benefits. The Affiliation Agreement is an appurtenance to the ownership of a Residence Interest. A copy of the Club's Affiliation Agreement is attached hereto as Exhibit "B" and incorporated herein by reference.

2.2 Allocation means the total number of days each year, as established in the Residence Documents, for which a Member is entitled to use of a Residence without incurring a per diem charge, and as more particularly described in the Affiliation Agreement and Reservations Procedures as amended from time to time, and may include types of Allocations as therein defined.

2.3 Articles of Incorporation means the Articles of Incorporation of the Members Association, as they may be amended from time to time.

2.4 Assessment(s) means the assessment paid by the Members pursuant to Article VIII below.

2.5 Associated Club means those locations for which the Program Manager has determined that membership in the Membership Program should be made available to owners or members at such club locations on a voluntary basis in accordance with such terms and conditions as may be determined by the Program Manager from time to time. For locations in which membership may only be a condition of ownership of some Residence Interests and not others, the term "Associated Club" shall only be deemed to refer to those Residences for which membership in the Membership Program is not mandatory.

2.6 Association Property means all real and personal property owned by the Members Association, including, but not limited to, all furnishings and other personal property contained within each Residence made subject to this Club Declaration that are not the property of an individual Member. All personal and intellectual property related to the operation of the reservation system by the Program Manager outlined in the Reservation Procedures, including, but not limited to, any and all computer hardware and software, shall not be Association Property and is and always shall be the personal property of the Program Manager.

2.7 Bylaws means the Bylaws of the Members Association, as they may be amended from time to time.

2.8 Calendar means the calendar prepared by the Program Manager and provided to Members, which shall at all times establish the dates of each Allocation at least five (5) years into the future.

2.9 Chapter 33 means the provisions of Chapter 33, of Title 28, U.S. Virgin Islands Code, as the same is constituted on the date of the recording of this Club Declaration.

2.10 Club or The Club means the Residence Interests and Common Elements subject to this Club Declaration and in which Members own Residence Interests and are affiliated with the Membership Program on a mandatory basis by virtue of ownership of their Residence Interests.

2.11 Club Declaration means this Supplementary Declaration of The Club at Great Bay Condominium, as it may lawfully be amended from time to time, and the result of recordation of such is the establishment of the Club Condominium.

2.12 Club Manager means a company organized for or experienced in hospitality management authorized to do business in the U.S. Virgin Islands, or its assignee, pursuant to the Management Agreement who shall be designated by the Declarant to manage the Club.

2.13 Common Elements means those items defined in Chapter 33 as Common Area and Facilities to the extent herein applicable and further as defined in Section 1.4 of Article I above.

2.14 Common Expenses means collectively Condominium Common Expenses, common expenses attributable to the Residential Interests, including per diem charges, as applicable, and such other charges as are provided in the Membership Program documents. All of the foregoing are sometimes referred to as "Club Dues," and the annual budget of Common Expenses of the Members Association is sometimes referred to as a "Schedule of Club Dues."

2.15 Common Surplus means any excess of all receipts of the Members Association over the amount of the Common Expenses.

2.16 Condominium means The Club at Great Bay Condominium.

2.17 Condominium Common Expenses means and include:

(a) Expenses including all reserves for replacement or maintenance of the Condominium Property declared Condominium Common Expenses by the provisions of the Residence Documents or by Chapter 33.

(b) Expenses of maintenance, operation, repair and replacement of the Common Elements and Limited Common Elements, as well as all other costs and expenses properly incurred by the Members Association, such as expenses relating to use, if any, of the facilities, operations or personnel of the adjacent hotel pursuant to any agreement for same.

(c) Expenses of administration and management of this Condominium Property, and of the Members Association, including, but not limited to, compensation paid by the Members Association to a manager, accountant, attorney, or other employee or independent contractor.

(d) Any valid charge against the Condominium Property as a whole.

(e) All costs and expenses incurred by the Members Association in connection with regulatory compliance.

(f) Any taxes assessed against the Association Property.

(g) Casualty, flood and/or liability insurance on the Association Property, Common Elements and Limited Common Elements including such parts of the interior of Residence Interests.

(h) Any other expenses incurred in the normal operation and maintenance of the Residences, Residence Interests, and the Common Elements and Limited Common Elements which cannot be attributed to a particular Owner.

(i) Repair and maintenance for normal wear and tear of the interior of Residence Interests;

(j) Repair and replacement of furniture, fixtures, appliances and carpeting of Residence Interests, and deferred maintenance and replacement reserves for the same;

(k) Utility Services relating to the interior of any Residence;

(l) All costs and fees relating to the operation of the reservation procedures pursuant to which Members may reserve use and occupancy of a Residence in accordance with the Reservation Procedures, as applicable;

(m) Uncollected real property taxes assessed against each Residence Interest shall be treated as Condominium Common Expenses if and only if the laws of the U.S. Virgin Islands so provide; otherwise real property taxes shall be billed by the governmental tax authority directly to each Member and shall be paid separately by them; any governmental lien for non-payment of such taxes shall be levied only as against the offending owner of the applicable Residence Interest.

2.18 Condominium Property means and include the Residences, lands, leaseholds, easements and personal property that are subjected to condominium ownership from time to time as part of this Condominium, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with this Condominium.

2.19 Day means a period of time associated with the use of a Residence. Days shall measure the period of occupancy assigned to a Member for use of a Residence pursuant to the Reservation Procedures or the Procedures for Reserving Usage, as applicable.

2.20 Declarant means RC Hotels (Virgin Islands), Inc., a U.S. Virgin Islands corporation, its successors and assigns. No party other than the named corporation shall exercise the rights and privileges reserved herein to the Declarant unless such party shall receive and record in the Public Records of St. Thomas, U.S. Virgin Islands, a written assignment from RC Hotels (Virgin Islands), Inc., of all or a portion of such rights and privileges.

2.21 Declaration means the Declaration of Great Bay Condominium recorded as set forth above in the Deed Records of St. Thomas and St. Johns, U.S. Virgin Islands, which along with this Club Declaration constitutes the full and complete declaration of condominium for this subject Condominium.

2.22 Limited Common Elements shall be defined as stated in Section 1.5 of Article I above.

2.23 Management Agreement means the agreement between the Members Association and the Declarant which allocates the parties' respective duties and obligations regarding the on-going management of this Condominium.

2.24 Member means a person (natural or otherwise) who, by virtue of ownership ("Owner") of a Residence Interest, has membership privileges in the Membership Program on a mandatory basis. Where more than one person owns a Residence Interest, then such persons shall designate at the time of purchase of a Residence Interest which person will be deemed to be the Member (cannot be more than one) for purposes of reserving usage under the Reservation Procedures, for receiving notices from the Members Association, for voting purposes, etc., which person shall sometimes be referred to as the "Designated Member". Where a Member is not an individual, it shall designate at the time of purchase of a Residence Interest, which individual will be treated as the individual Member for purposes of reserving usage under the Reservation Procedures and such designated person will remain in place until changed in accordance with the Residence Documents.

2.25 Members Association or Association means the association provided for in the Declaration and in this Club Declaration of all owners of Residences and Residence Interests in this Condominium, including the Declarant as the owner of any unsold Residences or Residence Interests, whether such association is incorporated or unincorporated.

2.26 Member Club means those locations including the subject Club which become affiliated with the Membership Program from time to time pursuant to an agreement similar to the Affiliation Agreement or otherwise, and for which membership in the Membership Program is a mandatory obligation of ownership of a Residence Interest. For locations where membership in the Membership Program may only be a condition of ownership of Residence Interests in some Residences, the term "Member Club" shall only be deemed to refer to such Residences or Residence Interests.

2.27 Membership Program means the program benefits and services created and operated by the Program Manager as they may exist from time to time, which Members participate in by virtue of ownership of a Residence Interest or by other means established by the Program Manager, e.g., the benefits and services made available to Associate Members.

2.28 Membership Program Documents means the Affiliation Agreement, the Reservation Procedures and any other documents governing the use and operation of the Membership Program, as may be amended from time to time.

2.29 Membership Program Dues shall consist of the costs and expenses of the Membership Program that are assessable each calendar year and become common charges to the Members Association and as Common Expenses of those owning Residence Interests.

2.30 Mortgagee means the Declarant (and any successor in interest to the Declarant as to a purchase-money mortgage), the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or any trust, savings and loan association, credit union, mortgage company, bank, insurance company, or commercial loan company, to the extent that any of the same hold a first mortgage encumbering any Residence or any Residence Interest.

2.31 Organizer means The Ritz-Carlton Club, St. Thomas, Inc., a U.S. Virgin Islands corporation, its successors and assigns described in Section 6.4 of Article VI below. Organizer is joining in the execution of this Club Declaration to evidence its rights and responsibilities hereunder.

2.32 Owner means, in the case of the Club, the owner of a Residence Interest who shall also be known as "Member."

2.33 Procedures for Reserving Usage means the rules and regulations governing the reservation and use of Residences by Owners to be promulgated by either (i) the Members Association in the event the Affiliation Agreement is terminated and membership in the Membership Program pursuant to Section 6.4 of Article VI below is no longer an appurtenance to ownership of a Residence Interest and (ii) the Declarant in the event it intends to offer Residences for sale without membership in the Membership Program as an appurtenance.

2.34 Program Manager means The Ritz-Carlton Travel Company, L.L.C., a Delaware limited liability company, the entity that created and is currently operating the Membership Program.

2.35 Real Estate Taxes means those property taxes assessed by the U.S. Virgin Islands or any political subdivision thereof against the Residences and Residence Interests and their respective undivided interests in the Common Elements.

2.36 Reservation Procedures means the rules and regulations governing the reservation and use of Residences in the Club and the residences and facilities at other locations within the Membership Program which rules and regulations have been promulgated, adopted and/or amended from time to time by the Program Manager.

2.37 Reserved Allocation means the portion of the Allocation as established in the Reservation Procedures or other Residence Documents, for which a Member is assigned usage of a specific Residence or a specific type of Residence during a specific period or periods of time each year pursuant to the Calendar for a given location.

2.38 Residence means a Condominium Unit created by the Declaration together with a proportionate undivided share in the Common Elements, Limited Common Elements and the Common Surplus which are appurtenant thereto, and together with those appurtenances described in the Declaration; or otherwise an apartment, villa, unit or other separate lodging accommodations available for occupancy in the Condominium Property in which a Resident Interest is owned.

2.39 Residence Documents means those documents governing the use of Residences and Residence Interests in this Condominium owned or to be owned by Members such as, but not limited to, any Declaration and this Club Declaration or other instrument establishing the Residence Interests conveyed to Owners, and By laws of the Members Association and any Rules and Regulations of the Members Association.

2.40 Residence Interest means the Condominium Unit created by this Club Declaration described by an interval ownership interest in a Residence together with the proportionate undivided share in the Common Elements, Limited Common Elements and the Common Surplus which are appurtenant thereto, and together with those appurtenances described in Article VI of this Club Declaration and particularly the use rights of Members in the Membership Program including the use of accommodations in one or more of the other locations pursuant to the Affiliation Agreement and Reservation Procedures.

2.41 Residence Interest Expenses means those expenses common to the owners of Residence Interests such as, but not limited, to expenses associated with the Membership Program Dues and expenses associated with the higher level of services provided to the Members during their stays at the Condominium.

2.42 Residence Interest Furnishings means all furniture, appliances, moveable equipment, utensils, carpeting, accessories, and other personal property located within a Residence Interest which are owned by the Members Association and administered by the Club Manager for the benefit of the Members.

2.43 Unit ( or "Condominium Unit") as established by this Club Declaration shall mean and refer to that part of the Condominium Property which is subject to ownership by one or more persons as a Residence or Residence Interest and may also pertain to a specifically enumerated apartment or other accommodation for temporary occupancy at this Condominium.

2.44 Use Period means the days of use per year allotted to each Member in one or more Residences as controlled by the Reservation Procedures.

2.45 Utility Services means and includes, but not be limited to, electric power, water, garbage and sewage disposal and telephone service, and all other such public or private service and convenience facilities.

### **ARTICLE III EXHIBITS**

The Exhibits referred to in this Club Declaration shall include the following:

3.1 Exhibit "A". A listing and description provided in a legally sufficient form of the Residence Interests which are hereby created and as to which this Club Declaration has been imposed. As set forth in Exhibit "A," each Residence Interest is identified by a number so that no Residence Interest bears the same designation as any other Residence Interest. In the event this Club Declaration is recorded prior to completion of construction of all described Residences and improvements, or an amendment to the Club Declaration is recorded adding a subsequent phase to this Condominium prior to completion of construction of all Residences and improvements contained in such subsequent phase, upon completion of such construction, an amendment to this Club Declaration shall be recorded which refers to the Declaration or related document and contains reference to the floor plans showing the location of all promised improvements "as-built," together with a Certification of Surveyor attesting to the completion of construction in accordance with the plans. In addition to other purposes, the Residence Interests are listed herein for the purpose hereby expressly permitted of effectuating an interval form of real property ownership with respect to each such Residence thus establishing Residence Interests. The Percentage Interest In Common Elements is also included in Exhibit "A".

3.2 Exhibit "B". The Affiliation Agreement.

### **ARTICLE IV EASEMENTS**

The following easements are hereby expressly reserved or have been granted:

4.1 General Easements. Non-exclusive easements over, across and under this Condominium Property, in addition to those provided in the Declaration, are expressly provided for and reserved herein in favor of the Declarant and the Members, and their respective lessees, guests and invitees, as follows:

(a) Encroachments .. In the event that for any reason, a Residence Interest shall encroach upon any portion of any of the Common Elements or upon any other Residence or Residence Interest, or in



the event any Common Element shall encroach upon any Residence or Residence Interest, then an easement shall exist to permit such encroachment so long as the same shall exist.

(b) Traffic. Easements shall exist for ingress and egress over such streets, walks and other rights of way serving the Residence Interests as shall be necessary to provide for reasonable access to the public ways.

4.2 Association Easements. Except as limited by Chapter 33, the Members Association may grant easements from time to time over the Common Elements.

4.3 Declarant Easements. With respect to marketing, sales and rental, governmental requirements, Declarant easements, and construction easements, all such easements reserved by Declarant in the Declaration also shall be reserved where applicable with respect to Residence Interests. Further, for so long as the Declarant holds any interest in any Residence, Residence Interest or other property located adjacent to or near this Condominium Property, the Declarant hereby reserves unto itself easements and rights to grant easements over and across this Condominium Property as it may deem necessary or desirable for its use from time to time.

4.4 Other Easements. Other easements may have been granted over this Condominium Property as previously recorded in the Public Records of St. Thomas, the U.S. Virgin Islands, or as otherwise set forth in a survey or other document pursuant to applicable law.

## **ARTICLE V**

### **RESIDENCE INTERESTS**

5.1 Description of Residence Interests. Each Residence Interest shall include that part of a building containing the Residence Interest that lies within the boundaries of the Residence to which it relates by numeric identification, and which upper and lower boundaries, perimeter boundaries, and limited common elements are as described in the Declaration, and shall have the further boundary limitation of interval ownership in such Residence as set forth and described in the deed of conveyance issued by Declarant to each Member

5.2 No Warranty. The Declarant does not make any warranty of any kind, express or implied, and the Declarant hereby disclaims any such warranties, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, and the Members and the Members Association assume all risk and liability resulting from the use of this property, except that to the extent permitted by law, any written warranties received by Declarant shall be available for the benefit of Members.

5.3 Creation of Residence Interests and Effect on Residences Created under the Declaration. A Residence Interest is created upon its listing in Exhibit "A" as supplemented from time to time, and upon its description therein to include reference to the legal identification number of a Residence created by the Declaration and also to refer to that part of the Condominium Property which is subject to such ownership as a Residence Interest. No Residence Interest may be created by any person or entity other than the Declarant and its successors, transferees and assigns who are specifically conveyed this right, and shall specifically not be available to purchasers of Residences, their successors or assigns except with the prior written approval of Declarant in a recorded instrument. If the Declarant has evidenced its approval in a recorded instrument, a group of Residence Interests will revert to being a single Residence any time all Residence Interests relating to the Residence are owned by the same legal person or entity, if also the Declarant has evidenced its approval in a recorded instrument. All Residence Interests shall be subject to use based upon the Reservation Procedures. Notwithstanding the above, the Declarant may assign its right to commit Residences to Residence Interest ownership to any legal person or entity it chooses. At the time one or more Residence Interests are created which utilize as part of their property descriptions the description of a Residence created pursuant to the Declaration, the status of the Residence as a separate condominium unit shall cease unless and until it is no longer committed to Residence Interests as hereinabove described.

5.4 Creation of Residence Interest and Waiver of Partition. As addressed in detail hereinabove at Section 5.3 of Article V, Declarant may create and establish a Residence Interest by listing same on Exhibit "A," as supplemented from time to time. By acceptance of a deed to such Residence Interest, each purchaser waives his right to bring a suit for partition except in accordance with the provisions of this Club Declaration.

5.5 Conveyance to and by Purchaser. As a Condominium Unit, each Residence Interest shall constitute a separate and identifiable interest in real property separate and distinct from all other Residence Interests and from all other Residences, which estate may be separately conveyed and encumbered. The specific rights and limitations conveyed to each purchaser of a Residence Interest, including, without limitation, the interval ownership characteristic of the Residence Interest including the minimum and maximum usage rights granted to such purchaser, shall be established pursuant to the deed of the Residence Interest from Declarant to each purchaser together with the Residence Documents. A purchaser may acquire more than one Residence Interest and thereafter convey or encumber each Residence Interest so acquired separately. In no event, however, shall a Member convey or encumber less than a Residence Interest as defined herein, attempt to subdivide a Residence Interest into lesser interests, or merge together more than one Residence Interest.

5.6 Legal Description of Residence Interest. A contract for sale of a Residence Interest written prior to the date this Club Declaration is filed in the real estate records may legally describe a Residence Interest by reference to the Residence Interest number and the purchaser's right to use and occupy the Residence during periods reserved pursuant to the Reservation Procedures, or by completing the following legal description:

Residence Interest Number " X - (dash) Y" (insert Residence No. and Residence Interest No., e.g. 21-12 ) consisting of said Condominium Unit in The Club at Great Bay Condominium, as defined and described in the Club Declaration of Condominium thereof, *to be filed for record* in the Recorder's Office for the District of St. Thomas and St. John, Virgin Islands of the United States, together with the exclusive right to possession and occupancy of the specific Residence Interest owned (e.g., two or three bedroom type) during the Reserved Allocation subject to reservation by the Member pursuant to the Reservation Procedures and together with a minimum of twenty-one days of use in accordance with the Residence Documents.

After recordation of this Club Declaration, every contract for sale, deed, lease, mortgage, trust deed, or other instrument relating to a Residence Interest will legally describe the Residence Interest as set forth above except that the italicized phrase shall be omitted and in its place shall be the following phrase of recordation of this Club Declaration: ". . . recorded as Document No. \_\_\_\_\_, in the Recorder's Office . . ."

Any legal description substantially in the form provided above or which is otherwise sufficient to identify the Residence Interest shall be good and sufficient for all purposes to sell, convey, transfer and encumber or otherwise affect a Residence Interest including an undivided ownership interest in all Common Elements, Limited Common Elements and easements appurtenances thereto.

5.7 Deannexation. Declarant may deannex from this Club Declaration all or any of the Residence Interests:

(a) Prior to the first deed being recorded describing a Residence Interest relating by common interior boundaries to a specific Residence.

(b) Subsequent to the first deed being recorded describing a Residence Interest relating by common interior boundaries to a specific Residence, but prior to termination as provided in Article XVI hereunder, upon the approval of the Declarant and a majority of the Members, plus 100% of the Members owning Residence Interests relating to such Residence.

(c) The deannexation of Residence Interests from the provisions of the Club Declaration shall be effected by recording upon the recordation of a Declaration of Deannexation in the deed records of the U.S.V.I. which shall contain (1) a legal description of the Residence Interests being deannexed and location thereof, and (2) such other terms and conditions as the Declarant deems advisable or necessary so long as not in conflict with the express terms and provisions of this Section 5.7.

(d) Upon any deannexation pursuant to this Section 5.7, and at all times thereafter, this Club Declaration shall no longer govern the use, enjoyment, repair, maintenance, or operation of the Residence Interests so deannexed.

## **ARTICLE VI APPURTENANCES**

6.1 Appurtenant Interests. Each Residence Interest shall have as an appurtenance thereto that undivided share of the Common Elements and Common Surplus as more specifically described in Exhibit "A." The Owner of each Residence Interest shall be liable for that share of the Common Expenses which equals the percentage interest in the Common Elements and Common Surplus appurtenant to his Residence Interest. Each Residence Interest shall also have as an appurtenance thereto a membership in the Membership Program. Each Residence Interest's share of the Common Expenses, and each Residence Interest's undivided interest in the Common Elements of this Condominium shall be calculated based upon the approximate value of such Residence Interest in uniform relationship to the value of each other Residence Interest in this Condominium, i.e., divided by the fraction represented by one as the numerator and as the denominator the number of Residence Interests having as a part of their legal property descriptions a given Residence number ("Residence"), as more specifically set forth in Exhibit "A," e.g., the Owner of each Residence Interest listed therein of this initial Club Declaration shall own an undivided 1/12th of the Common Elements and of the Common Surplus otherwise allocated to ownership of the Residence and shall also be responsible for 1/12th of the Common Expenses allocated to such Residence.

6.2 Partition of Common Elements. The share of the undivided percentage interest in the Common Elements appurtenant to each Residence Interest shall remain undivided, and no Owner, Member or other shall bring, or have any right to bring, any action for partition or division of same.

6.3 Partition of Residence Interests, or Appurtenance. No action for partition of any Residence Interest or any appurtenance to a Residence Interest shall lie except with respect to the Declarant in so far as termination of the Affiliation Agreement may result in termination of the Membership Program as an appurtenance to ownership of Membership Interests as more specifically set forth in Section 6.4 of Article VI.

6.4 The Membership Program. So long as the Declarant owns a Residence or has not expressly relinquished its right to annex additional Residences or Residence Interests, then, subject to the approval of the Organizer, which it can refuse to give in its sole and absolute discretion, the Declarant shall have the right to record a supplement to Exhibit "A" and to convey by deed subject to the Declaration and this Club Declaration, as amended from time to time, any such property as a Residence Interest to any Purchaser. Thereafter, such Residence Interest shall be subject to the Membership Program, subject to the approval of the Organizer, which it can refuse to give in its sole and absolute discretion, unless the language contained in said deed or any amendment to the Declaration clearly indicates a contrary intention on the part of the Declarant. Subject to an agreement between Declarant and Organizer, participation in the Membership Program is an appurtenance to ownership of each Residence Interest and is a benefit that the Organizer is responsible for having made available to Members. Reservation and occupancy rights of Members are governed by the Membership Program Documents.

In the event that the Affiliation Agreement is terminated for any reason or Residence Interests otherwise cease having membership in the Membership Program as an appurtenance to ownership of a Residence Interest, then reservation and occupancy rights of Members shall no longer be governed by the Reservation Procedures but rather thereafter by the Procedure for Reserving Usage. Furthermore, as set forth in the Affiliation Agreement, upon

the termination of affiliation with the Club, the Members Association and all Members shall cease using and thereafter abstain from using any and all personal or intellectual property owned by the Club Manager or otherwise related to the Club including, but not limited to, any and all (i) computer hardware and software used for the operation of the Club's reservation and exchange system (except as otherwise set forth in the Affiliation Agreement or required by applicable law) and (ii) use or application of the name or trademarks of The Ritz-Carlton or relating to The Ritz-Carlton Club.

**ARTICLE VII**  
**MAINTENANCE, ALTERATION AND IMPROVEMENT**

In addition to the responsibilities for the maintenance of the Condominium Property, and restrictions upon its alteration and improvement as set forth in the Declaration, such responsibilities and restrictions shall be as follows:

7.1 Residences and Residence Interests.

(a) By the Members Association. Unless caused by the specific abuse of a Member or any licensee, guest or tenant of a Member, the Members Association shall maintain, repair and replace at the Members Association's expense:

(1) The interior of each Residence subject to this Club Declaration including all furnishings, fixtures and equipment owned by the Members Association and all Common Elements and Limited Common Elements except as otherwise provided in the Residence Documents.

(2) All incidental damage caused to a Residence subject to this Club Declaration by reason of maintenance, repair and replacement accomplished pursuant to the provisions of Section 7.1(a)(1) above.

(b) By the Member. The responsibility of the individual Member for maintenance, repair and replacement with respect to the Residences shall be as follows:

(1) To not paint or otherwise decorate or change the appearance of any Residence in which the Member owns a Residence Interest or uses a Residence by virtue of such ownership, or any portion of the Condominium Property without the prior written approval of the Members Association.

(2) To promptly report to the Members Association any defect or need for repairs for which the Members Association is responsible.

(3) To bear in their entirety any expenses of repairs or replacements to Residence as to which the Member owns a Residence Interest or uses a Residence by virtue of such membership or to its components, furnishings, carpeting, appliances, or other property, real, personal or mixed, occasioned by the specific use or abuse by said Member or any licensee, guest or tenant of said Member.

7.2 Management Agreement. The Members Association may enter into such management agreements, from time to time, as it deems necessary to engage the services of a Club Manager to carry out all or part of the maintenance and operational duties and obligations of the Members Association in accordance with this Club Declaration. In the event that the Management Agreement is terminated, the maintenance duties and other obligations regarding this Condominium will be the exclusive responsibility of the Members Association and new club manager, if any.

7.3 Members Association's Access to Residences. The Members Association has the irrevocable right of access to each Residence subject to this Club Declaration whenever necessary, for maintaining the Condominium Property or for making emergency repairs necessary to prevent damage to the Common Elements or to any Residence subject to this Club Declaration.

7.4 Maintenance of Residences. After turnover of control to non-Declarant Members, the Declarant, Club Manager, or the Members Association may utilize any period of time as it determines to be reasonable to be used for maintenance purposes as to each Residence with respect to which a Residence Interest pertains.

7.5 Common Elements and Limited Common Elements. The Members Association shall maintain, repair and replace all Common Elements and Limited Common Elements of Residence Interests.

## **ARTICLE VIII DUES AND ASSESSMENTS**

8.1 Club Dues. All fees and costs assessed against the Members Association or all Members by the Club Manager or Program Manager pursuant to the Membership Program Documents shall constitute Membership Program Dues and shall be part of the Common Expenses. As set forth in Section 6.4 of Article VI above, the Affiliation Agreement (and thus Membership in the Club as a condition of ownership of a Residence Interest) shall constitute an Appurtenance to each Residence Interest. Notwithstanding anything contained in this Club Declaration to the contrary, Common Expenses shall be apportioned only among those who own Residences and Residence Interests in the manner and in such amounts as provided in the Residence Documents and as may be more fully described in the Membership Program Documents.

8.2 Assessments. The mailing and collection of assessments (or "Club Dues" as sometimes used in the context of Residence Interests) against each Member for Common Expenses, for unforeseen calamities, for the costs or expenses for which an individual Member may be solely responsible pursuant to the terms of the Residence and/or Membership Program Documents, and for reserves as may from time to time be established by the Members Association, shall be pursuant to its Bylaws, subject to the following provisions:

(a) Interest: Application of Payments. Assessments and installments on such assessments paid on or before ten (10) days after the date when due shall not bear interest, but all sums not paid on or before ten (10) days after the date when due shall bear interest at the highest rate permitted by law from the date when due until paid. In addition to such interest, the Members Association may charge an administrative late fee on delinquent accounts in the amount of \$25.00 or such other amount as may otherwise be permitted (or not prohibited) by law and/or the Residence Documents for each delinquent installment that the payment is late. The Members Association is further authorized to utilize the services of a collection agency for collection of delinquent accounts and to charge and impose a lien against the Residence Interest owned by the delinquent Member for such costs in accordance with applicable law in the U.S. Virgin Islands. All payments on accounts shall be first applied to any interest that has accrued, then to any administrative late fee, then to any costs and reasonable attorneys' fees incurred in collection, and then to the assessment payment first due. The board of directors of the Members Association shall have the discretion to increase or decrease the amount of the administrative late fee and/or interest rate within the limits imposed by law; provided, however, that such increase or decrease shall be made effective by amending the rules and regulations for this Condominium and notifying the Members of same by regular mail addressed to each Member at his last known address. Notwithstanding any provision of this paragraph to the contrary, the Members Association shall have the right to waive any late fees or interest that accrue as a result of delinquent payment.

(b) Lien for Assessments. The Members Association shall have a lien against each Residence Interest, as applicable, for any unpaid assessments and for interest accruing thereon, which lien shall also secure any late charges and reasonable attorneys' fees and costs incurred by the Members Association incident to the collection of such assessment or enforcement of such lien, whether or not legal proceedings are initiated. The lien is effective from and after recording a claim of lien in the Public Records of the U.S. Virgin Islands stating the legal description of the Residence Interest, as applicable, the name of the Member of record, the amount claimed to be due and the due dates. The lien shall continue in effect until all sums secured by the lien including interest, administrative late fees, recording fees and attorney fees shall have been fully paid or until such time as is otherwise permitted by law. Such claims of lien shall be signed and verified by an officer of the Members Association, or by an authorized agent

of the Members Association, e.g., officer or designated employee of the Club Manager. Upon full payment, the party making payment shall be entitled to a recordable satisfaction of lien, to be prepared and recorded at such party's expense. All such liens shall be subordinate to any mortgage recorded prior to the date of recording the claim of lien, and all such liens may be foreclosed by suit brought in the name of the Members Association in the same manner as a foreclosure of a mortgage on real property, or as otherwise provided by applicable law. The Members Association may also sue to recover a money judgment for unpaid assessments without thereby waiving any claim of lien.

In the event a Mortgagee holding a first priority mortgage shall obtain title to a Residence Interest as a result of the foreclosure of such mortgage, or in the event such Mortgagee shall obtain title to a Residence Interest as the result of a conveyance in lieu of foreclosure of such mortgage, such Mortgagee shall not be liable, except to the extent required under the laws of the U.S. Virgin Islands, for that share of the Common Expenses or assessments chargeable to the Residence Interest, or the Member thereof, which became due prior to the acquisition of title by such Mortgagee, and any such unpaid share of Common Expenses or assessments chargeable against any such foreclosed Residence Interest or against any Residence Interest transferred in lieu of foreclosure, shall be deemed a Common Expense to be paid in the same manner as other Common Expenses by all of the Members.

Nothing contained herein shall be construed as a modification of any rights or remedies of the Members Association, except to the extent that the Residence Documents allow additional remedies to those expressly set forth in said statute and to the extent that such additional remedies are permitted by law.

(c) Personal Liability for Unpaid Assessments. Each Member as owner of a Residence Interest is personally liable for all assessments made against the Residence Interest pursuant to this Club Declaration, and the Members Association may bring an action for a money judgment against a delinquent Member to collect all sums due the Members Association, including interest, late charges, costs and reasonable attorneys' fees. In the event a Residence Interest is owned by more than one person or entity, to the extent permitted by law such Members shall be jointly and severally liable for all assessments made against such Residence Interest.

(d) Payments of Assessments. No Member may withhold payment of any regular or special assessment or any portion thereof because of any dispute which may exist between that Member and the Members Association, the directors of the Members Association, the Club Manager or the Declarant or among any of them, but rather each Member shall pay all assessments when due pending resolution of any dispute.

8.3 Common Surplus. Each Member shall own a share of the Common Surplus attributable to each Residence Interest owned in accordance with Section 6.1 of Article VI above.

8.4 Refunds of Common Surplus. If the Members Association shall refund all or a portion of any Common Surplus to the Members for any fiscal year in which the Declarant paid any assessment, such refund shall be prorated as of the date of closing of any sale of a Residence Interest upon which the sale was closed by the Declarant during such year, and the prorated amount allocable to the period of time of the Declarant's Membership shall be refunded directly to the Declarant by the Members Association.

8.5 Certificate. Any Member shall have the right to require from the Members Association a certificate showing the amount of unpaid assessments against him with respect to his Residence Interest. The holder of a mortgage or other lien shall have the same right as to any Residence Interest upon which it has a lien. Any person who relies upon such certificate shall be protected thereby with respect to any action by the Members Association.

8.6 Declarant's Guarantee. Declarant guarantees to each Member through the 2002 fiscal year of the Members Association, that the total annual assessment for Residence Interest Common Expenses imposed upon Members of Residence Interests will not exceed the following:

2-bedroom Residences: \$6,745.53 per Residence Interest  
3-bedroom Residences: \$7,932.01 per Residence Interest

exclusive of Real Estate Taxes. In consideration of this guarantee, the Declarant shall be excused from the payment of its share of the Club Dues which otherwise would have been assessed against its unsold Residence Interests during the term of the guarantee. As a consequence of this exemption, the Declarant shall pay any amount of Common Expenses incurred each year which exceed the total revenues for the Members Association for such year for so long as the guarantee remains in effect. The Declarant reserves the right, but not the obligation, to extend and increase the amount of this guarantee for one or more periods of one year each after the expiration of the initial or any subsequent guarantee period.

**ARTICLE IX**  
**THE MEMBERS ASSOCIATION**

The operation of the Condominium shall be by the Members Association which shall be subject to and bound by the Articles of Incorporation and Bylaws as set forth in Article 18 of the Declaration. Furthermore, anything to the contrary notwithstanding, the Members Association is authorized to contract for management of this Condominium with respect to Residence Interests, and to delegate to such contractor all powers and duties of the Members Association except such as are specifically required by the Residence Documents or applicable law to have approval of the board of directors or members of the Members Association. Notwithstanding any provisions contained in this Club Declaration to the contrary, it is the intent of this Club Declaration that the ability of the board of directors of the Members Association to independently terminate the Management Agreement without a vote of the Members shall be governed solely by the terms and conditions of the Management Agreement.

**ARTICLE X**  
**INSURANCE**

The purchase of insurance shall be as set forth in the Declaration and shall apply to all insurable interests as described therein including, but not limited to, Residence Interests and all furnishings, fixtures and equipment found therein.

**ARTICLE XI**  
**USE RESTRICTIONS**

Use of this Condominium and related Condominium Property shall be in accordance with the following provisions as long as this Condominium exists:

11.1 **Personal Use Restriction.** Except for Residences relating to Residence Interests owned by the Declarant, which may be utilized as set forth in the Residence Documents, each of the Residences relating to Residence Interests subject to this Club Declaration shall be occupied only for temporary occupancy. Use of the same and the Common Elements and Limited Common Elements of this Condominium is limited solely to the personal use of Members, their guests, invitees and lessees and for recreational uses by corporations and other entities owning Residence Interests. However, anything to the contrary notwithstanding, the Reservation Procedures may limit the right of Members to allow use of any Residence otherwise properly reserved by a Member by an unaccompanied guest, invitee, or lessee of the Member. Use of Residences or the Common Elements for commercial purposes or any purposes other than the personal use described herein is expressly prohibited. "Commercial purpose" shall include, but not be limited to, a pattern of rental activity or other occupancy by a Member that the Members Association, in its reasonable discretion, could conclude constitutes a commercial enterprise or practice. No Residence Interest may be divided or subdivided into smaller Residence Interests except by the Declarant whose right to do so shall not be abridged.

11.2 **Use of Common Elements and Limited Common Elements.** The Common Elements and Limited Common Elements shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the use of the Members. At present, Members may utilize the Common Elements only while lodging in a Residence pursuant to use rights relating to ownership of Residence Interests at this

Condominium, i.e., during times of reserved lodging therein. Notwithstanding anything contained in this Section 11.2, the Club Manager (if approved by the board of directors of the Members Association) may establish separate procedures whereby Members may utilize the Common Elements during times other than while lodging in a Residence, provided that reasonable capacity for usage of the Common Elements is not exceeded and all Members have an equal ability to gain access to the Common Elements pursuant to the established procedures. In addition, the Club Manager (if approved by the board of directors of the Members Association) may charge a reasonable daily use fee for such utilization of the Common Elements by Members during times other than while lodging in a Residence.

11.3 Decoration of Residence. No Member shall cause physical alteration to the furnishings, appliances, personal property or decor of any Residence, subject to this Club Declaration, without the prior written consent of the Club Manager. The Club Manager shall determine the interior color scheme, decor and furnishings of each Residence as well as the proper time for redecorating and renovating such Residence and its contents. A Member shall have the right to display personal effects in the Residence during the Member's periods of reserved usage so long as such effects cause no harm to the Residence and are removed by the Member upon conclusion of the reserved usage period.

11.4 Right of Occupancy of Residence – Holdover Members. In the event any Member fails to vacate a Residence after conclusion of an Allocation or otherwise uses or occupies or prevents another Member from using or occupying a Residence as may be required by the rules and regulations governing such occupancy, that Member shall be in default hereunder and shall be subject to immediate removal, eviction or ejection from the wrongfully occupied Residence; shall be deemed to have waived any notices required by law with respect to any legal proceedings regarding the removal, eviction or ejection; and shall pay to the Member entitled to use the Residence during such wrongful occupancy, as liquidated damages for the wrongful use of the Residence, a sum equal to two hundred percent (200%) of the fair rental value per day for the Residence wrongfully occupied as determined by the Members Association in their sole discretion for each day, or portion thereof, including the day of surrender, during which the Member wrongfully occupies a Residence, plus all costs and expenses of enforcement, including attorneys' fees, which amounts may be collected by the Members Association in the manner provided herein for the collection of Assessments. A Member who overstays the designated reserved Allocation is sometimes referred to as a holdover Member. It shall be the responsibility of the Members Association to take such steps as may be reasonably necessary to remove such holdover Member from the Residence, and to assist the holder of any reservation for the unavailable Residence who may be affected by the holdover Member's failure to vacate, in finding alternate residences during such holdover period.

(a) In addition to such liquidated damages for the wrongful use of the Residence and any other remedies as may be available to it, the Members Association shall have the right, but not the obligation, to secure, at its expense, alternate accommodations for any holder of a subsequent reserved Use Period who may not occupy the Residence due to the failure to vacate of any holdover Member. Such alternate accommodations shall be as near in value as possible to the Residence Interest reserved and would be paid for by the Members Association. In such circumstances, the holdover Member shall pay the Members Association for the cost of such alternate accommodations, any other costs incurred due to his failure to vacate, and an administrative fee of One Hundred Dollars (\$100.00) per day (or such greater administrative fee so long as neither prohibited by law nor contravened by written policy of the Condominium) during this period of holding over. In the event it is necessary that the Members Association contract for a period greater than the actual period of holding over in order to secure alternate accommodations as set forth above, the holdover Member is responsible to pay for the entire period, although the daily administrative fee shall cease upon actual vacating by the holdover Member.

(b) The Members Association shall submit a bill to the holdover Member in accordance with this Article and the holdover Member hereby agrees to pay the invoice most promptly. The party who is thus prevented from using a Residence hereby agrees to accept such payment as full remedy and to waive any other recourse in the matter. If the holdover Member does not pay the bill submitted by the Members Association, then the Members Association has the right to place a lien on the Residential Interest owned by the holdover Member and to enforce that lien in accordance with applicable law.



(c) The foregoing provisions shall not abridge the Members Association's right to take such other action against a holdover Member as is permitted by law including, but not limited to, eviction proceedings. Further, the foregoing provisions shall not limit the Members Association's right to take any action permitted by law against trespassers who are not Members.

11.5 No Domiciliary Intent with Respect to Residences Committed to the Club. In connection with the Club, no person or party may purchase a Residence Interest or enter, stay, or dwell upon or about a Residence with the intent or desire to be or become a legal domiciliary of the U.S. Virgin Islands or any political subdivision thereof, and all such persons or parties shall and do hereby waive, release and remise any such intent or desire. Similarly, no person or party may enter, stay or dwell upon or about a Residence with the intent that such condominium unit be or become that person's or party's principal dwelling or principal place of residence, and all Members hereby represent that they currently possess and intend to maintain a principal dwelling or principle place of residence at a location other than within same.

11.6 Residences Committed to the Club. As addressed in detail hereinabove at Section 5.3 of Article V, a Residence Interest is created upon its listing in Exhibit "A" as supplemented from time to time. Reservation and occupancy rights of non-Club Units, if any, shall be governed by the documents to be provided by the Declarant in the event it offers such Units for sale. If the Declarant has not done so, the Members Association may promulgate such rules in the event the Affiliation Agreement is terminated and membership in the Membership Program pursuant to Section 6.4 of Article VI above is no longer an appurtenance to ownership of a Residence Interest or offered by the Declarant to the Owners of the Resident Interests herein. Through acceptance of a conveyance of a Residence Interest, each Member acknowledges and agrees that the Member has purchased the specific Residence Interest corresponding to the legal description of the Residence Interest owned and such use rights as are described in the Membership Program Documents, and that after full annual use of such Residence interests, then use rights may accrue to owners of all Residences with similar characteristics (bedroom configuration, view or otherwise) shall be available for use by all Members on a first come, first served, reservation basis as addressed at Section 5.3 of Article V and subject also to prior use for maintenance purposes all in accordance with the Reservation Procedures, the Residence Documents or management policy, as applicable. No Member shall have the right to use or occupy a Residence without first receiving a confirmed reservation as provided in the Reservation Procedures. Failure to request a reservation, or to receive a particular desired reservation, does not relieve the Member from the obligation to pay all Club Dues and taxes attributable to each Residence Interest owned. Reservation and occupancy rights of Residence Interests shall be governed by the Reservation Procedures or Procedures for Reserving Usage, which may be amended by the Club Manager or Program Manager in accordance with the terms and conditions set forth in the Affiliation Agreement. In order to provide for the proper cleaning and maintenance of the Residences between occupancies, a Member's right to occupy a Residence during the reserved time shall be subject to whatever reasonable check-in and check-out times may be set by the Members Association or Reservation Procedures from time to time. Specifically, the Members Association (or Club Manager) has the sole discretion to annually determine and redefine Day #1 and the succeeding times for use of any given Residence Interest such that Day #1 commences on other than the first day of the Allocation as specified in the Calendar attached to the Reservation Procedures or the Procedure for Reserving Usage, as applicable, and also sole discretion to determine the time of day for check-in to and check-out from a Residence.

11.7 Additional Usage of Residence Interests. In addition to usage of Residences as described in Section 5.4 of Article V and hereinabove, all Residences shall be available for use by all Members including those from all other designated member Club locations or Associated Clubs, on a reservation basis, in accordance with the terms of the Affiliation Agreement, a current copy of which is attached as Exhibit "B," the Reservation Procedures and related rules, if any, promulgated by the Program Manager and Club Manager respectively. The Club Manager shall administer all reservations for use of Residences in conjunction with its operation and management of the Club in accordance with the terms of the Affiliation Agreement, the Reservation Procedures and related rules, if any. During the term of the Affiliation Agreement, the rules promulgated from time to time by the Club Manager and the Program Manager shall govern as to the procedures and requirements for all aspects of use of all Residences which are accessible pursuant to the Membership Program.

To the extent additional member Club locations exist from time to time, such Members will be able to compete to reserve the use of a Residence in such other member Club locations on a first come, first served basis along with Members who own Residence Interests herein, subject to any priority rights and the reservation procedures set forth in the Membership Program Documents. Likewise, a Member who holds a Residence Interest at this Condominium will be able to reserve the use of residences at other member Club locations on the same basis subject to similar restrictions and limitations.

**ARTICLE XII**  
**ALIENABILITY OF RESIDENCES OR RESIDENCE INTERESTS**

The right of a Member to sell, transfer, assign or hypothecate his Residence Interest shall not be subject to the approval of the Declarant, Members Association or anyone else. However, in accordance with the Bylaws of the Members Association, a Member shall be responsible for notifying the Members Association upon the transfer or conveyance of his Residence Interest within fifteen (15) days of such transfer or conveyance.

**ARTICLE XIII**  
**RIGHTS OF DECLARANT**

13.1 Right to Change Interior Design and Arrangement. Notwithstanding anything in the Declaration and/or this Club Declaration to the contrary, and in addition to any other rights which may be reserved to the Declarant therein, the Declarant reserves the right to change the interior design and arrangement of a Residence so long as the Declarant owns all Residence Interests relating to the Residence so changed and altered. Notwithstanding the foregoing, no change shall be made by the Declarant as provided herein which would conflict with applicable law.

13.2 Sharing of Common Areas. To provide for sharing of common areas and facilities with guests or owners of one or more nearby hotels or resorts, the Declarant also reserves the right to unilaterally amend the Declaration and/or this Club Declaration to provide for the sharing of the use of the common areas of this Condominium with guests of the currently adjacent Ritz-Carlton Hotel and/or owners of units or residences in other resorts located adjacent to or in near proximity to this Condominium, including, but not limited to, the granting of any ingress and egress easements necessary to effectuate the sharing in the use and burdens of the expenses relating to said use of such facilities, but only for so long as such sharing will not overburden the facilities; provided, however, that in the event this Club Declaration is so amended, such other hotel or resort shall be required to share with the Members of this Condominium any recreation and common areas existing as a part of its hotel or resort; and provided further, however, that the Members at each resort or condominium shall bear their pro rata share of the costs of maintaining all such shared facilities and common areas.

13.3 The "Ritz-Carlton" Mark or Any Mark Having the Name "Ritz-Carlton" in It. Declarant and/or its affiliates are the owners of all rights in the Ritz-Carlton name and trademark, including, but not limited to, all rights in the Ritz-Carlton mark in connection with this Condominium. Neither the Members Association nor the Members have any license to use or other interest in the Ritz-Carlton marks, however, the Members Association and Members may identify this Condominium as "The Ritz-Carlton Club, St. Thomas" until such time as the Affiliation Agreement is terminated or the Organizer, in its sole discretion, or its successors and assigns, in their sole discretion, determines otherwise. In the event Declarant, in its sole discretion, provides written notice to the Members Association (which notice shall be deemed to be notice to each Member or other owner of any Residence Interest or Residence) that it shall no longer be permitted to use the Ritz-Carlton marks to identify this Condominium, the Members Association and each Member shall immediately take steps to cease all use of the mark(s) identified in Declarant's notice to identify this Condominium, and shall:

(a) immediately remove all signs containing the marks from this Condominium, and from any off-site location to the extent the sign refers to this Condominium contemplated herein;

(b) immediately destroy all stationary, descriptive literature or printed or written matter bearing the marks;

(c) immediately cease and desist from using the marks (or any other variation thereof) orally or in writing in referring to or describing the Members Association or the Members; and

(d) take immediate action to effect changes to the documents of the Members Association reflecting the mark(s) to eliminate the use of such mark(s) as soon as possible, but in any event, within three (3) months.

The provisions of this Section 13.3 may be enforced by any remedy at law or equity, including mandatory and/or prohibitory injunctions, and by accepting a deed in which this Club Declaration is deemed to be incorporated, each Member acknowledges that in the event of non-performance of any of the above-described restrictions, Declarant's remedies at law shall be deemed inadequate to enforce the terms of this Section.

13.4 Other Reserved Rights. The Declarant shall also have such other rights as may be reserved elsewhere in this Club Declaration.

#### **ARTICLE XIV COMPLIANCE AND DEFAULT**

14.1 Compliance and Default. Each Member shall be governed by and shall comply with the terms of the Residence Documents and, to the extent applicable, the Membership Program Documents, as the same may be amended from time to time. Failure of a Member to comply with the provisions of such documents shall entitle the Members Association or other Members to pursue any and all legal and equitable remedies for the enforcement of such provisions, including, but not limited to, an action for damages, an action for injunctive relief or an action for declaratory judgment. All provisions of the Declaration and this Club Declaration shall be enforceable equitable servitudes and shall run with the land and shall be effective until this Condominium is terminated.

14.2 Costs and Attorneys' Fees. In any proceeding arising because of an alleged failure of a Member or the Members Association to comply with the terms of the Residence Documents or, to the extent applicable, the Membership Program Documents, the prevailing party shall be entitled to recover the costs of the proceeding, and recover such reasonable attorneys' fees as may be awarded by the court, including all appeals and all proceedings in bankruptcy.

14.3 No Waiver of Rights. The failure of the Members Association or any Member to enforce any covenant, restriction, provision of Chapter 33, the Residence Documents, or the Membership Program Documents, shall not constitute a waiver of the right to do so thereafter.

14.4 Injunctive Relief. The Members Association may seek an injunction from a court of equity to compel compliance with or prohibit violation of the Residence Documents regardless of whether an adequate remedy at law exists.

14.5 Governing Law; Waiver of Jury Trial; Venue of Actions. The Residence Documents and the Membership Program Documents shall be governed by, and shall be construed in accordance with, the laws of the U.S. Virgin Islands. The Members Association, each Member, the Declarant, the Organizer, the Club Manager, and any other party claiming rights or obligations by, through, or under this Club Declaration, each hereby waive any right they may have under any applicable law to a trial by jury with respect to any suit or legal action which may be commenced by or against the others concerning the interpretation, construction, validity, enforcement or performance of this Club Declaration or any other agreement or instrument executed in connection with the Residence Documents. In the event any such suit or legal action is commenced by any party, the other parties hereby agree, consent and submit to the personal jurisdiction of the courts of the U.S. Virgin Islands, with respect to such suit or legal action, and each party also hereby consents and submits to and agrees that venue in any such suit or legal action is proper in said court

and county, and each party hereby waives any and all personal rights under applicable law or in equity to object to the jurisdiction and venue in said court and county. Such jurisdiction and venue shall be exclusive of any other jurisdiction and venue.

**ARTICLE XV**  
**AMENDMENTS**

15.1 **By Members.** Notwithstanding any provisions of the Declaration or this Club Declaration to the contrary, an amendment to this Club Declaration may be proposed either by the board of directors of the Members Association or a Member. It may be considered at any meeting of the Members, regular or special, of which due notice has been given according to the Bylaws. Passage shall be by the affirmative vote of Members casting not less than fifty-one percent (51%) of the vote of all of the members of the Members Association either in person or by proxy and not just of those present. Notwithstanding the foregoing, unless otherwise permitted herein and by the law of the U.S. Virgin Islands, no amendment shall change the configuration or size of any Residence Interest or Residence subject to this Club Declaration in any material fashion, materially alter or modify the appurtenances to a Residence Interest, nor a Member's proportionate share of the Common Expenses or Common Surplus, nor the voting rights appurtenant to any Residence Interests, unless the record Member or Members thereof, and all record Members or Mortgagees or others having placed liens thereon, shall join in the execution of the amendment. No amendment shall be passed which shall impair or prejudice the rights and priorities of any Mortgagees, or change the provisions of this Club Declaration with respect to Mortgagees, without the written approval of all Mortgagees of record. No amendment shall change the rights and privileges of the Declarant or the Organizer without the Declarant's or the Organizer's prior written approval, which may be denied in each of their respective absolute discretion as it relates to their respective rights and privileges.

15.2 **By Declarant.** Notwithstanding any provision of the Declaration or this Club Declaration to the contrary:

(a) The Declarant reserves the right to change the interior design and arrangement of any and all Residences subject to this Club Declaration and to alter the boundaries. If the Declarant shall make any changes in Residences, as provided in this Section 15.2(a), such changes shall be reflected by the amendment of this Club Declaration with a survey attached, reflecting any authorized alteration of Residences, and said amendment need only be executed and acknowledged by the Declarant.

(b) The Declarant, so long as it owns more than ten percent (10%) of the Residence Interests, reserves the right, at any time, without notice to or consent of the Members Association, Mortgagees or Members, to amend this Club Declaration, as may be required by any lending institution or public body, or in such manner as the Declarant may determine to be necessary or desirable, provided such amendment shall not increase the proportion of Common Expenses borne by, nor decrease the ownership of Common Elements by Members other than the Declarant, nor unilaterally increase the Club Dues of the Members.

(c) The Declarant reserves the right, subject to the prior written approval of the Organizer, which it may deny in its sole and absolute discretion, to modify the Calendar as among Residence Interests, as long as the Declarant owns the Residence Interests so altered or is doing so to conform with any legal requirement which in the Declarant's sole discretion requires such a change.

(d) The Declarant shall also have the right to make such other amendments as may be reserved elsewhere in this Club Declaration.

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Official Records of  
ST THOMAS/ST JOHN  
WILMA G. HART SMITH  
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**ARTICLE XVI**  
**TERMINATION**

In addition to the manner, if any, provided by Chapter 33, as applicable, this Condominium may be terminated if all of the Members vote to so terminate it; in that event the board of directors of the Members Association shall direct the President or Vice President of the Members Association to execute and duly record an instrument terminating this Condominium, or if termination arises as set forth in this Club Declaration due to destruction or condemnation, this Condominium shall be deemed to be terminated and the Condominium Property thereafter owned in common by the Members. The undivided interest in the property owned in common by each Member shall then become the percentage of the undivided interest previously owned by such Member in the Common Elements upon termination of this Condominium.

**ARTICLE XVII**  
**PHASED DEVELOPMENT**

As stated in the Declaration, it is the intent of the Declarant to develop this Condominium in phases. With respect to the maximum number of Condominium Units in this Club Condominium, the Declarant may create up to the currently contemplated 960 Residence Interests, or such higher or lower number as the Declarant chooses to create, and/or any combination and variation of the two main types of Residences currently proposed.

**ARTICLE XVIII**  
**MERGER**

Pursuant to Article 22 of the Declaration, this Club Declaration, the Members Association and the Common Elements of this Condominium described herein may be merged with the declaration of condominium, condominium association and common elements of an independent and separate condominium to form a single condominium under conditions set forth therein. For so long as this Condominium (or Residences or Residence Interests therein) remains a Member Club, this Condominium shall not be merged with any other condominium without the prior written consent of the Organizer, which consent the Organizer may withhold in its sole discretion.

IN WITNESS WHEREOF, the Declarant has executed this Club Declaration on this 10<sup>th</sup> day of May, 2002.

WITNESSES:  
*Shelley Neuman*  
*Spencer H. Small*

RC HOTELS (VIRGIN ISLANDS), INC.

By: The Ritz-Carlton Club, St. Thomas, Inc., a U.S. Virgin Islands corporation  
By: *Joseph A. Arato*, Vice President  
Attorney-in-Fact pursuant to Power of Attorney  
Dated April 29, 2002 and Recorded on \_\_\_\_\_  
As Document No. \_\_\_\_\_

STATE OF FLORIDA    )  
                                  ) SS.  
COUNTY OF ORANGE )




THE FOREGOING INSTRUMENT was acknowledged before me this 10<sup>th</sup> day of May, 2002, by Joseph F. Scalo, as Vice President of The Ritz-Carlton Club, St. Thomas, Inc., a U.S. Virgin Islands corporation, on behalf of said corporation.

WITNESS my hand and seal this 10<sup>th</sup> day of May, 2002.

Shelly A. Freeman  
(Notary Signature)

Shelly A. Freeman  
(Notary Name Printed)  
NOTARY PUBLIC

(NOTARY SEAL)

 Shelly A. Freeman  
My Commission CC817930  
Expires March 16, 2003

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**NOTED IN THE CADASTRAL RECORDS  
FOR COUNTRY/TOWN PROPERTY, BOOK FOR  
ESTATE NAZARETH, NO.1 RED HOOK QUARTER  
ST. THOMAS, VIRGIN ISLANDS, ( SUPPLEMENTARY  
DECLARATION OF CONDOMINIUM FOR THE CLUB  
AT GREAT BAY CONDOMINIUM, ST. THOMAS,  
VIRGIN ISLANDS.**

**Cadastral Survey / Tax Assessor Offices  
St. Thomas, V. I. Dated: May 31, 2002  
Phyllis Harrigan Special Assistant to the  
Tax Assessor for Surveys  
Office of the Lieutenant Governor**

EXHIBIT A



THE RITZ-CARLTON® CLUB



**EXHIBIT A  
LEGAL DESCRIPTION OF RESIDENCES  
AND LISTING OF RESIDENCE INTERESTS  
PERCENTAGE OWNERSHIP ALLOCATION IN  
THE COMMON ELEMENTS AND FOR VOTING PURPOSES**

UNIT NO.	UNIT TYPE	RESIDENCE INTERESTS	VALUE	% INTEREST	VOTES		
1101	2br	# 1 - 12	\$ 111,787.50	0.364228%	50,406		
1102	2br	# 1 - 12	\$ 111,787.50	0.364228%	50,406		
1103	2br	# 1 - 12	\$ 111,787.50	0.364228%	50,406		
1201	2br	# 1 - 12	\$ 111,787.50	0.364228%	50,406		
1202	2br	# 1 - 12	\$ 111,787.50	0.364228%	50,406		
1203	3br	# 1 - 12	\$ 131,450.00	0.428292%	59,272		
1204	Member's Lounge	# 1 - 12					
1301	2br	# 1 - 12	\$ 111,787.50	0.364228%	50,406		
1302	2br	# 1 - 12	\$ 111,787.50	0.364228%	50,406		
1303	3br	# 1 - 12	\$ 131,450.00	0.428292%	59,272		
1304	2br	# 1 - 12	\$ 111,787.50	0.364228%	50,406		
1401	2br	# 1 - 12	\$ 111,787.50	0.364228%	50,406		
1402	2br	# 1 - 12	\$ 111,787.50	0.364228%	50,406		
1403	3br	# 1 - 12	\$ 131,450.00	0.428292%	59,272		
1404	2br	# 1 - 12	\$ 111,787.50	0.364228%	50,406		
1501	2br	# 1 - 12	\$ 111,787.50	0.364228%	50,406		
1502	2br	# 1 - 12	\$ 111,787.50	0.364228%	50,406		
1503	3br	# 1 - 12	\$ 131,450.00	0.428292%	59,272		
1504	2br	# 1 - 12	\$ 111,787.50	0.364228%	50,406		
1601	2br	# 1 - 12	\$ 111,787.50	0.364228%	50,406		
1602	2br	# 1 - 12	\$ 111,787.50	0.364228%	50,406		
1603	3br	# 1 - 12	\$ 131,450.00	0.428292%	59,272		
1604	2br	# 1 - 12	\$ 111,787.50	0.364228%	50,406		
<hr/>							
17 Unit 2 Bedroom Allocation	12 X	\$ 1,900,387.50	\$ 22,804,850.00	6.191871%	74.302457%	856,902	10,282,824
5 Unit 3 Bedroom Allocation	12 X	\$ 657,250.00	\$ 7,887,000.00	2.141462%	25.697543%	296,360	3,556,320
22 Unit Allocation	12 X	\$ 2,557,637.50	\$ 30,691,850.00	8.333333%	100.000000%	1,153,262	13,839,144
Member's Lounge		\$ 1,341,450.00					604,872
		\$ 32,033,100.00					14,444,016

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Official Records of  
ST THOMAS/ST JOHN  
WILMA O. HART SMITH  
RECORDER OF DEEDS

**EXHIBIT B**

**AFFILIATION AGREEMENT**

**THE RITZ-CARLTON CLUB  
MEMBERSHIP PROGRAM  
AFFILIATION AGREEMENT**

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## AFFILIATION AGREEMENT

**THIS RITZ-CARLTON CLUB MEMBERSHIP PROGRAM AFFILIATION AGREEMENT** ("Agreement") is made and entered this 10<sup>th</sup> day of May, 2002, by and among The Ritz-Carlton Travel Company, L.L.C., a Delaware limited liability company, whose address is 6649 Westwood Boulevard, Suite #500, Orlando, Florida 32821-6090 ("Program Manager"), RC Hotels (Virgin Islands), Inc., a U.S. Virgin Islands corporation ("Developer"), The Ritz-Carlton Club, St. Thomas, Inc., a U.S. Virgin Islands corporation ("Organizer"), Great Bay Condominium Owners Association, Inc., a not-for-profit U.S. Virgin Islands corporation ("Members Association"), and The Ritz-Carlton Management Company, L.L.C., a Delaware limited liability company, whose address is 6649 Westwood Boulevard, Suite #500, Orlando, Florida 32821-6090 ("Club Manager"). The aforescribed parties are sometimes individually referred to as a "Party" or collectively as "Parties", and said terms shall also include respective successors and assigns of any Party or Parties.

### RECITALS

**WHEREAS**, the Developer is developing through the oversight and supervision of the Organizer a luxury, fractional ownership project known as The Club at Great Bay Condominium, located in St. Thomas, U.S. Virgin Islands (the "Club"); and

**WHEREAS**, the Program Manager has established a reservation system (the "Reservation System") and other related benefits and services known as The Ritz-Carlton Club Membership Program (the "Membership Program") for the purpose of providing a means for Members to reserve the use of accommodations and facilities at the Club and other locations affiliated with the Membership Program, in accordance with and as restricted by the terms of the Membership Program as set forth in this Agreement and the procedures governing reservations (the "Reservation Procedures"); and

**WHEREAS**, the Members Association is the not-for-profit owners' association for the Club with responsibility for the management and operation of the Club; and

**WHEREAS**, the Members Association has entered into that certain property management agreement with the Developer, which, among other things, allows for the delegation, to the extent permitted by law and not otherwise prohibited, of certain management and operations responsibilities to the Club Manager; and

**WHEREAS**, the Organizer pursuant to an agreement with Developer has agreed to cause and it, in collaboration with the Developer and the Members Association, desire that the Club become affiliated with the Membership Program and that each Owner (defined below) at the Club become a Member (defined below) of the Membership Program with the ability to make use of the Reservation System (defined below) and the other benefits of the Membership Program, pursuant to the terms of this Agreement and the Reservation Procedures; and

**WHEREAS**, the Club Manager desires to have the Club become affiliated with the Membership Program and further desires to coordinate its activities and perform services associated therewith in accordance with the provisions of this Agreement; and

**WHEREAS**, the Program Manager desires that the Organizer, Developer, the Members Association, the Club Manager and the Members acknowledge that the Program Manager shall have all of the duties, obligations and responsibilities for the operation of the Reservation System regarding the use of Residences (defined below) at the Club as part of the Membership Program in accordance with the terms of this Agreement, the Reservation Procedures and applicable law, so as to fully integrate Residences at the Club and their respective Members into the Membership Program.

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations contained in this Agreement, the parties hereby agree as follows:

## **AGREEMENT**

### **I. Recitals and Owner Covenants.**

1.1 By execution of this Agreement, the Parties agree that the above recitals are true and correct and are hereby incorporated into this Agreement.

1.2 By acceptance of a conveyance of a Residence Interest (defined below) at the Club subject to the Residence Documents (defined below), which have been provided to or made available to each Member, each Member is deemed to have consented to the terms and conditions of this Agreement and to have further consented to the appointment of the Members Association as the authorized representative to act on behalf of the Member with respect to the provisions of this Agreement. Wherever the Members Association acknowledgment, consent, understanding and/or agreement is stated or implied in this Agreement, such acknowledgment, consent, understanding and/or agreement shall be deemed to also have been given by the Board of Directors, if applicable, and each Member.

### **II. Definitions.**

Unless the context requires a different meaning, the following terms used in this Agreement are defined as follows:

Agreement means this Ritz-Carlton Club Membership Program Affiliation Agreement.

Allocation means the total number of days each year, as established in the Residence Documents, for which a Member is entitled to use a Residence without incurring a per diem charge. An Allocation may be further divided into Reserved Allocations (defined below) and Unreserved Allocations (defined below).

Associate Member means a person having privileges within the Membership Program through a separate category of membership other than that type of membership associated with ownership of a Residence Interest and mandatory affiliation with the Membership Program.

Associated Club means a location pursuant to which membership in the Membership Program is made available to persons on a voluntary basis in accordance with such terms and conditions as may be determined by the Program Manager and for which an agreement similar to the subject Agreement has been executed.

Calendar means the annual calendar(s) promulgated by the Program Manager and made available to all Members which identifies Seasons (defined below), the Reserved and Unreserved Allocations, Reservation and Confirmation Periods and other pertinent information for each specific Club in a given year.

Club means a Member Club or Associated Club, or in some cases the subject Club depending upon the context.

Club Manager means the person engaged by the Developer, or as applicable, the Members Association, with responsibility for the management and operation of a particular Member Club.

Developer means the person who has developed and created a plan for the shared usage by Members of Residences and common facilities at a particular Member Club and is selling Residence Interests therein directly or through others including, but not limited to, RC Hotels (Virgin Islands), Inc.

Effective Date means the date when this Agreement has been fully executed by all Parties.

Guest of the Program Manager means any person who lodges in a Residence at a Club on a space-available basis as an invited guest of the Program Manager, who, except where otherwise specifically provided, shall be treated as a guest.

Home Club means the particular Member Club in which the Member owns a Residence Interest.

Member means a person (natural or otherwise) who, by virtue of ownership of a Residence Interest, has membership privileges in the Membership Program on a mandatory basis. Where more than one person own a Residence Interest, then such persons shall designate at the time of purchase of a Residence Interest which person will be deemed to be the Member (cannot be more than one) for purposes of reserving usage under the Reservation Procedures. Where a Member is not an individual, it shall designate at the time of purchase of a Residence Interest, which individual will be treated as the individual Member for purposes of reserving usage under the Reservation Procedures, and such designated person will remain in place until changed in accordance with the Residence Documents.

Members Association means all of the Members, including the Developer as the owner of unsold Residence Interests, who own Residence Interests at a particular Member Club (defined below) and who are part of an association of Members, whether such association is incorporated or unincorporated.

Member Club means those locations, including the subject Club, which become affiliated with the Membership Program from time to time pursuant to an agreement similar to this Agreement or otherwise, and for which membership in the Membership Program is a mandatory obligation of ownership of a Residence Interest. For locations where membership in the Membership Program may only be a condition of ownership of Residence Interests in some Residences, the term "Member Club" shall only be deemed to refer to such Residences.

Membership Program or The Ritz-Carlton Club Membership Program means the program of benefits and services created and operated by the Program Manager as they may exist from time to time, which Members participate in by virtue of ownership of a Residence Interest or by other means established by the Program Manager, e.g., the benefits and services made available to Associate Members.

Membership Program Documents means this Agreement, the Reservation Procedures and any other documents governing the use and operation of the Membership Program, as may be amended from time to time.

Membership Program Dues shall consist of the costs and expenses of the Membership Program that are assessable to the Members Association each calendar year and become common charges.

Membership Program Marks means all present and future trademarks or service marks, trade names, symbols, logos, slogans, designs, insignia, emblems, devices and distinctive designs, whether owned by or licensed to the Program Manager or any of its affiliates or subsidiaries, and whether or not registered under the laws of the United States of America or any other country, which are used to identify the Membership Program and/or Program Manager or are otherwise used in the promotion and/or operation of the Membership Program, including, but not limited to, the marks identified on Exhibit A attached hereto, as may be amended from time to time by the Program Manager in its sole discretion.

Membership Program Materials means those reservation services, promotional and/or informational materials developed by the Program Manager for the Membership Program from time to time.

Organizer means The Ritz-Carlton Club, St. Thomas, Inc., a U.S. Virgin Islands corporation.

Owner means the owner of record of a Residence Interest at the subject Club and at other Member Clubs who is also a Member and is referred to herein as such.

Program Manager means the person which manages and operates the Membership Program.

Reservation System means the method, means or system by which Members and, as applicable, Associate Members are required to compete among themselves in order to reserve the use of any Residences at any Member Club and, as applicable, an Associated Club.

Reserved Allocation means the portion of the Allocation as established in the Residence Documents, for which a Member is assigned usage of a specific Residence or a specific type of Residence during a specific period or periods of time each year pursuant to the Calendar for a given Home Club.

Residence means an apartment, villa, unit or other separate lodging accommodations available for occupancy at a Club as defined in the Residence Documents.

Residence Documents means those documents governing the use of Residences at a particular Home Club pursuant to which the Developer has created Residence Interests owned



or to be owned by Members such as, but not limited to, any declaration or other instrument establishing the Residence Interest conveyed to Owners, any Bylaws of the Members Association and any Rules and Regulations of the Members Association.

Residence Interest means the particular real property interest in or use rights a Member has at a Member Club.

Season means that time or times of the year set forth in the Calendar for each particular Club which reflects usage of a Residence consistent with the Residence Interest purchased by a Member as set forth in the Residence Documents.

Unreserved Allocation means the days remaining each year from a Member's Allocation after the number of days designated as Reserved Allocation are deducted as established in the Residence Documents.

### **III. The Club's Relationship with the Membership Program.**

3.1 By execution of this Agreement, the Parties agree to affiliate the Club with the Membership Program in accordance with the terms and conditions of the Membership Program Documents. During the term of this Agreement and any renewal terms, the Developer, the Organizer, the Members Association and Club Manager shall cooperate fully with the Program Manager in the promotion and operation of the Membership Program at the Club.

3.2 The Developer, the Organizer, the Members Association and the Club Manager hereby acknowledge the following:

a. In accordance with the Residence Documents, membership in the Membership Program is an appurtenance to and a condition of ownership of a Residence Interest at the Club.

b. The Program Manager manages the use of all Residences at the Club, and at all other Member Clubs, through a Reservation System operated under the name of The Ritz-Carlton Club Membership Program.

c. In the event the Program Manager affiliates other resorts with the Membership Program in accordance with Article VII below, the Members at such locations will compete, through participation in the Reservation System, with Members at all Member Clubs, including the subject Club, for reservations for any Residences at such Member Clubs that are available after any priority given to Members at a particular Member Club, if any.

d. The relationship between the Members Association and the Program Manager and the operation of the Membership Program on behalf of the Members at a particular Member Club constitutes legitimate business of the Members Association.

e. The Membership Program is not a legal entity nor an association of any kind, but instead is a service name given to the variety of reservation services and other benefits currently offered and the restrictions currently imposed through the Program Manager. Members do not acquire any interest in the Membership Program per se as part of their Residence Interest. The services provided by the Program Manager do not include Club

Manager's site management and assessment collection duties for the subject Club, which are provided for and governed by the Developer's management agreement with Members Association.

**IV. Covenants of the Developer, the Organizer, Members Association and Club Manager.**

4.1 In connection with the Club, the Developer, the Organizer, Members Association and Club Manager agree to do the following:

a. Promptly submit or cause to be submitted to the Program Manager copies of all fully executed and recorded deeds or other evidence satisfactory to the Program Manager indicating that a Residence Interest at the Club has been transferred to a Member and setting forth that the Residence Interest is subject to membership in the Membership Program as an appurtenance to the Residence Interest such that the Member's use of a Residence at the Club or other Member Club is subject to the terms and conditions of the Membership Program.

b. Fully and accurately describe the Membership Program to Members and prospective purchasers of Residence Interests at the subject Club. The Developer, the Organizer, Members Association and Club Manager shall not in any way misrepresent the Membership Program or the Club's relationship with the Program Manager to Members or prospective purchasers of Residence Interests at the Club. The Developer, the Organizer, Members Association and Club Manager shall not amend, summarize, change or modify any Membership Program Materials without the prior express written consent of the Program Manager, and shall provide such Membership Program Materials, the Membership Program Documents and Residence Documents, as amended, to Members upon their reasonable request and/or as requested by applicable law.

c. Remain informed of new services and benefits provided by the Program Manager to Members.

d. Comply with all applicable federal, state and local laws, as well as all applicable administrative rules, regulations and orders in the conduct of their respective businesses as such conduct may affect the Club and the Membership Program.

4.2 The Members Association agrees that at the time the Developer transfers control of the Club to the Members Association as set forth in the Residence Documents, if any, the Club shall continue to be affiliated with the Membership Program as a Member Club pursuant to the provisions of the Membership Program Documents.

4.3 The Developer and Members Association represent and warrant to the Program Manager that (a) the Developer owns the real estate and improvements constituting the Club; and (b) each Member at the Club shall acquire, possess and enjoy the right to use a Residence at the Club in accordance with the restrictions contained in the applicable deed or other instrument pursuant to which a Member acquired a Residence Interest, the Residence Documents and the Membership Program Documents and in accordance with applicable law.

4.4 The Developer, the Organizer, Members Association and Club Manager agree that during the term of this Agreement, while the Club remains affiliated with the Membership Program as a Member Club, all requests for reservations of Residences at the Club from Members shall be processed through the Program Manager.

4.5 The Developer, the Organizer, Members Association and Club Manager agree to manage, operate and maintain the Club in a manner consistent with the standards of quality and customer service established by the Program Manager for all Member Clubs from time to time. In this regard, the Program Manager shall have the right to consent to the employment of any Club Manager engaged by the Developer or Members Association to manage, operate and maintain the Club. The Developer, the Organizer, Members Association and Club Manager agree to immediately notify the Program Manager of any change in any fact or circumstance affecting the operation of the Club and/or the Membership Program with respect to the Club, including, but not limited to, the termination of any existing Club Manager, and they further agree that should the Program Manager's consent not be obtained and given to the termination and/or employment of a new Club Manager that the Program Manager shall have the right to immediately terminate this Agreement and the affiliation of the Club with the Membership Program.

#### **V. Operation and Management of the Reservation System.**

5.1 By execution of this Agreement, the Developer, the Organizer, Members Association and Club Manager hereby acknowledge that the Program Manager has all of the rights and duties with regard to the reservation of use rights by Members at the Club and at other Member Clubs or Associated Clubs, for the purpose of implementing the reservation restrictions by virtue of and as outlined in the Membership Program Documents. The Parties agree that the Program Manager's rights, duties and obligations as set forth in this Agreement are exclusive to the Program Manager, and the Program Manager hereby agrees to perform all such duties and obligations.

5.2 The Program Manager shall have the right to adopt and amend those portions of the Membership Program Documents which the Program Manager, in its sole discretion, determines are necessary or desirable to amend from time to time in order to operate and manage the Membership Program and/or Reservation System. The Membership Program Documents will only be adopted or amended in a manner that in the Program Manager's reasonable business judgment will be for the principal purpose of improving upon the quality and operation of the Membership Program and/or Reservation System and furthering the collective enjoyment of the Membership Program by present and future Members (including Associate Members) as a whole. The Developer, the Organizer, Members Association and Club Manager agree that each Member's use of a Residence at his or her Home Club and the participation of each Member in the Membership Program shall be governed by the provisions of the Membership Program Documents as adopted and amended from time to time by the Program Manager.

5.3 The Developer, the Organizer, Members Association and Club Manager agree that the Program Manager shall have the right pursuant to the Reservation Procedures to reserve any unreserved use of Residences for its own promotional use, rental for its own account or any other purpose as the Program Manager determines in its sole discretion. In return, the Program Manager agrees to make available to the Members Association that portion

of such unreserved usage verified by the Club Manager as being reasonably necessary to perform additional maintenance of the Residences.

5.4 The Developer, the Organizer, Members Association and Club Manager acknowledge and agree that all personal and intellectual property related to the Program Manager's operation of the Reservation System for Residences at the Club, including, but not limited to, any and all computer hardware and software, is and always shall be the personal property of the Program Manager. In the event that this Agreement is terminated, irrespective of whether the termination is voluntary or involuntary and irrespective of the cause of such termination, the Program Manager shall continue to own and control the Reservation System, subject to, and in accordance with applicable law.

5.5 By execution of this Agreement, the Developer, the Organizer, Members Association and Club Manager hereby acknowledge that the Program Manager is responsible for exercising all of the rights and duties associated with the affiliation of Residences at the Club with any other program which provides use rights to Members at various locations through exchange of use rights or other means, and neither the Developer, the Organizer, Members Association nor Club Manager shall affiliate or attempt to affiliate such Residences with any such program other than as directed and approved by the Program Manager. The Program Manager shall have the right, but not the obligation, to manage all such use rights made through any such program on behalf of Members at the Club in coordination with the provider of such other use program.

#### **VI. Assessments, Collections and Transaction Costs.**

6.1 The Program Manager shall have the responsibility for providing the Members Association and Club Manager with notice of its total proposed Membership Program Dues assessment for the Club for the upcoming operating year at least ninety (90) days prior to the Members Association's annual meeting. In accordance with the Residence Documents, costs and expenses incurred by the Program Manager in connection with the operation of the Reservation System and the delivery of other Membership Program services and benefits shall be assessed by the Program Manager as Membership Program Dues to each Member and/or Member Resort based upon a reasonably prorated formula, together with a reasonable fee to the Program Manager which will contain a reasonable profit factor. Any extraordinary or special costs and expenses incurred by the Program Manager with respect to a given Member, group of Members or Member Club, may be assessed by the Program Manager only to the affected Member, group of Members or Member Resort as a portion of their Membership Program Dues. The Developer, the Organizer, Members Association, and Club Manager are not entitled to approve increases in Membership Program Dues assessments; however, the Program Manager agrees that in no event shall the amount of Membership Program Dues assessed to the Club per Member in a given calendar year exceed one hundred twenty-five percent (125%) of the Dues assessed to the Club per Member in the previous calendar year (i.e., a twenty-five percent (25%) increase) on a cumulative basis (e.g., if there is no increase in one year, then the increase in the following year may be fifty percent (50%).

6.2 As provided in Section 3.2a of Article III above, this Agreement, including the rights and obligations set forth herein, shall constitute an appurtenance to and obligation of ownership of a Residence Interest at the Club. The Members Association shall be liable to the Program Manager for all Membership Program Dues assessed hereunder; however, the Members Association may, in accordance with the Residence Documents for the Club, assess

and collect from each Member that portion of the Membership Program Dues attributable to such Member. The Members Association agrees that it shall pay to the Program Manager an amount equal to all the Membership Program Dues assessed against Members for a given year by February 28<sup>th</sup> (or such other reasonable date established by the Program Manager) of that year, whether or not the Members Association has actually been successful in collecting such amount from the Members by such date.

6.3 The Developer, Members Association and Club Manager agree to use their best efforts to annually assess and collect all amounts due from Members for the maintenance and operation of the Club, as required by the Residence Documents. All Membership Program Dues owed to the Program Manager from Members shall be assessed and collected by the Members Association and the Club Manager with such amounts. Membership Program Dues shall be remitted to the Program Manager by the Members Association on at least a weekly basis (or such other reasonable periodic basis established by the Program Manger) as collected; and in any event, pursuant to Section 6.2 above, shall be paid in full to the Club Manager by the Members Association no later than February 28th (or such other reasonable periodic basis established by the Program Manger) of each year.

6.4 The Developer, the Organizer, Members Association and Club Manager acknowledge and agree that any Member making a reservation pursuant to the Reservation Procedures, other than a reservation by a Member to use a Residence at the Club as part of the Member's Reserved Allocation, shall be personally liable for any transaction charges assessed to the Member by the Program Manager from time to time as set forth in the Reservation Procedures.

6.5 A Member shall only be permitted to use a reservation pursuant to the Reservation Procedures if all common assessments, taxes and other charges attributable to the applicable Residence Interest for the year for which the reservation is requested have been paid in full. In the event the Members Association has not yet assessed such amounts to become due, then, as a condition to acceptance by the Program Manager of the reservation request, the Member may be required to remit to the Program Manager an amount equal to the estimated amounts to become due, as determined by the Program Manager after consultation with the Club Manager. All such monies shall be held by the Program Manager for the benefit of the Members Association and/or the Member as required by applicable law. Any interest earned on such funds will be paid to the Members Association, and, in no event, will it be due and payable to the Member. In the event the amount remitted to the Program Manager for the estimated amounts due is in excess of the actual amounts due, the excess amount shall be returned to the Member or applied to the following year's common assessments taxes, at the Program Manager's sole discretion. In the event the amount remitted to the Program Manager is less than the actual amounts due, the Member shall remain liable for the deficiency and in no event shall be forgiven for said deficiency. The Members Association agrees, however, not to exercise any "lock-out" remedy it may have pursuant to applicable law and/or the Residence Documents, against any Member with respect to any deficiency which may exist between actual amounts assessed to the Member for a given calendar year, and the estimated amounts for that calendar year actually collected by Program Manager and to the Members Association.

#### **VII. Other Member Club and Associated Clubs.**

7.1 In the event the Program Manager affiliates one or more additional Member Clubs or Associated Clubs with the Membership Program, the agreement executed to

effect such affiliation shall, subject to applicable law, contain substantially the same terms and conditions as this Agreement in all material respects under the circumstances as pertaining to each such additional Member Club or Associate Club.

7.2 The Parties agree that the Program Manager shall have the following rights with respect to the addition of locations as Member Clubs or Associated Clubs:

a. The Program Manager may, in its sole discretion, elect to affiliate other locations with the Membership Program as Member Clubs or Associated Clubs from time to time. Neither the Developer, the Organizer, Members Association, nor Club Manager shall be entitled to participate in or consent to the Program Manager's decision in this regard. The Developer, the Organizer, Members Association and the Club Manager acknowledge and understand that in the event other locations are affiliated with the Membership Program, the addition of accommodations and facilities will result in the addition of new Members and, who, subject to the Allocation for each respective Member, will compete with existing Members and/or Associate Members in making reservations for the use of available accommodations and facilities within the Membership Program, including Residences at the subject Club.

b. The Program Manager may, in its sole discretion, create a separate membership program, develop individual resort properties as residential, transient or other use, or enter into management agreements with resort properties without the approval of the Developer, the Organizer, Members Association or Club Manager; and the Club Manager is under no obligation to affiliate with the Membership Program any specific location.

7.3 The Parties agree that any deletion of Member Clubs and/or Associated Clubs from the Membership Program shall be governed by the following:

a. In the event of a deletion of any Member Club or Associated Club that results in accommodations or facilities of such Member Club or Associated Club being unavailable for use by Members and/or Associate Members, the Program Manager shall notify all Members and Associate Members with confirmed reservations at the applicable Member Club or Associated Club of such unavailability of use within thirty (30) days after the related event of casualty, eminent domain action or automatic deletion.

b. The Program Manager may, in its sole discretion, delete an entire existing Member Club or Associated Club from the Membership Program due to casualty where any of the affected accommodations or facilities are not reconstructed or replaced. With respect to casualty, subject to applicable law the Parties further agree that:

(1) the Members Association and Club Manager shall obtain and maintain casualty insurance as to all accommodations, facilities and furnishings located upon the Club in amounts required by applicable law and/or the Residence Documents. The Program Manager shall not be liable for any costs associated with obtaining or maintaining such insurance.

(2) any insurance proceeds resulting from a casualty at the Club shall be applied, with the prior express written approval of the Program Manager to the replacement or acquisition of additional similar accommodations or facilities.

(3) any replacement of accommodations or facilities of the Club due to casualty shall be made so as to provide Owners with an opportunity to enjoy a substantially similar experience as was available with the deleted accommodations or facilities, as determined by the Program Manager in its sole discretion. In determining whether the replacement accommodations and facilities will provide a substantially similar experience, the Program Manager shall consider all relevant factors, including, but not limited to, some or all of the following: size, capacity, furnishings, maintenance costs, location (geographic, topographic and scenic), demand and availability for use. The Program Manager reserves the right, in its sole discretion, to reject replacement accommodations and facilities that do not meet its affiliation criteria including the high standards of quality and customer service established by the Program Manager for all Member Clubs or Associated Clubs from time to time.

c. The Program Manager may, in its sole discretion, delete existing Member Clubs or Associated Clubs from the Membership Program where an eminent domain action has taken place and where any of the affected accommodations or facilities are not replaced. With respect to any such eminent domain action, subject to applicable law, the Parties further agree as follows:

(1) in the event of a taking of all or a portion of the accommodations and facilities of a Member Club or Associated Club by eminent domain, the Developer, the Organizer, Members Association and the Club Manager agree that any proceeds resulting from such taking shall be applied, with the prior express written approval of the Program Manager, to the replacement or acquisition of additional similar accommodations or facilities.

(2) any replacement of accommodations or facilities due to a taking by eminent domain shall be made upon the same basis as replacements made due to casualty as set forth above.

d. The Program Manager may, in its sole discretion, delete an existing Member Club or Associated Club pursuant to the specific termination rights contained in the applicable agreement pursuant to which the location became affiliated with the Membership Program. A Member Club or Associated Club will also be automatically deleted from the Membership Program upon the expiration or earlier termination of the term of its fractional ownership plan, if any, and/or other similar plan for shared ownership and/or use of Residences as set forth in the applicable Residence Documents.

e. During any reconstruction or replacement period, Members may temporarily compete for available accommodations on a greater than one-to-one purchaser to accommodation ratio. If available, the Members Association and Club Manager shall acquire business interruption insurance for securing replacement accommodations or facilities during any reconstruction, replacement or acquisition period.

f. The Program Manager may delete an Associated Club from the Membership Program at any time, in its sole discretion in accordance with the terms of the applicable agreement pursuant to which the Associated Club became affiliated with the Membership Program.

g. In the event that a Member Club or Associated Club is deleted from the Membership Program, all Members or Associate Members who own Residence

Interests at the deleted location will also be deleted from the Membership Program and will not be able to make reservations at other Member Clubs or Associated Clubs; however, they will continue to have reservation rights in the location where he or she owns a Residence Interest in accordance with the terms of the Residence Documents.

7.4 While the Program Manager does not currently intend to substitute new locations for existing Member Clubs, the Program Manager reserves the right to exercise substitution rights, from time to time, in accordance with applicable law.

7.5 The Developer, the Organizer, Members Association and Club Manager understand and acknowledge that the accommodations and facilities of Associated Clubs are voluntarily affiliated with the Membership Program and there is no guarantee that accommodations and facilities at an Associated Club will ever be available for reservation or use by Members.

#### **VIII. Membership Program Marks and Membership Program Materials.**

8.1. The Program Manager and its affiliates and subsidiaries are the owners of all rights in the Membership Program Marks. Neither the Members Association nor the Members have any license to use or other interest in the Membership Program Marks. The Developer, the Organizer, and/or the Club Manager may identify the Club as a Ritz-Carlton Club location and part of the Membership Program until such time as the Program Manager, in its sole discretion, determines otherwise.

8.2 The Developer, the Organizer, Members Association and Club Manager acknowledge that:

a. the Program Manager has the right to exclude others from using the Membership Program Marks and Membership Program Materials and any variant or combination of said marks or materials determined by the Program Manager to be confusingly similar to the Membership Program Marks or Membership Program Materials;

b. the Program Manager has the right to control the use of the Membership Program Marks and Membership Program Materials in connection with the Membership Program; and

c. all uses of the Membership Program Marks and Membership Program Materials inure exclusively to the benefit of the Program Manager.

8.3 The Developer, the Organizer and Club Manager may use the Membership Program Marks and Membership Program Materials only with prior written approval from the Program Manager and in connection with any materials furnished from time to time by the Program Manager and only for the sole purpose of promoting the Membership Program. Said Parties shall comply with all requests of the Program Manager with respect to the appearance and use of the Membership Program Marks and Membership Program Materials. Said Parties agree to promptly submit one copy of all printed material which will use any of the Membership Program Marks or all or a portion of any Membership Program Materials to the Program Manager for inspection and approval in advance of use, which approval may be withheld or conditioned by the Program Manager in its sole and absolute discretion.



8.4 In the event Program Manager, in its sole discretion, provides written notice to the Developer, the Organizer and/or the Club Manager that it shall no longer be permitted to use Membership Program Marks, each Party notified shall immediately take steps to cease all use of the marks(s) identified in Program Manager's notice and shall:

(a) immediately remove all signs containing the Membership Program Marks from the Club, and from any off-site location;

(b) immediately destroy all stationery, descriptive literature or printed or written matter bearing the Membership Program Marks;

(c) immediately cease and desist from using the Membership Program Marks (or any variation thereof) orally or in writing;

(d) take immediate action to effect changes to any and all documents of the Developer, the Organizer and/or the Club Manager that reflect the Membership Program Mark(s) to eliminate the use of such mark(s) as soon as possible, but in any event, within three (3) months.

The provisions of this Section 8.4 may be enforced by any remedy at law or equity, including mandatory and/or prohibitory injunctions by the Program Manager against the Members Association, the Members, the Developer and/or Management Company.

#### **IX. Term, Early Termination and Remedies.**

9.1. This Agreement shall have an initial term commencing on the Effective Date and terminating twenty (20) years from December 31<sup>st</sup> of the first year that the Club is operational and Residences are available for occupancy for any portion of the year. It shall be automatically renewed for successive five (5) year periods thereafter, unless written notice of non-renewal is given by either the Members Association or the Program Manager no later than ninety (90) days prior to the end of any such initial term or subsequent renewal term. Notwithstanding the foregoing, this Agreement may otherwise be terminated as provided for below in this Article IX.

9.2 Termination of this Agreement and the Club no longer being affiliated with the Membership Program can occur as follows:

a. This Agreement will automatically terminate upon:

(1) the declaration of bankruptcy or insolvency of the Developer, Members Association or Club Manager according to law or if any general assignment shall be made of the Developer's, Members Association's or Club Manager's property for the benefit of creditors; provided, however, the Program Manager shall have the right, in its sole discretion, to continue the Agreement as to the Parties that have not been declared bankrupt or insolvent or made the subject of a general assignment for the benefit of creditors or during the pendency of such actions; or

(2) the deletion of the Club in accordance with Article VII above.

b. The Parties may terminate this Agreement:

(1) by the mutual written agreement of all of the Parties, effective upon the date agreed to by all Parties; or

(2) in the event of a material breach of any of the terms, conditions, covenants, representations or warranties contained in this Agreement without the breaching Party curing the asserted breach to the reasonable satisfaction of the Party giving such notice within thirty (30) days of the date of written notice to the breaching Party stating the grounds for such termination.

c. The Program Manager may terminate or suspend its participation in this Agreement, immediately upon written notice to the Developer, the Organizer, Members Association and Club Manager, in the event that the Program Manager determines, in its sole discretion, that the Developer, the Organizer, Members Association and/or Club Manager have failed to manage, operate and maintain the Club in a manner consistent with the standards of quality and customer service established by the Program Manager from time to time, including, but not limited to, the employment or termination by the Developer and/or Members Association of a management company without the Program Manager's consent, as addressed at Section 4.5 of Article IV hereinabove.

9.3 Any Party's exercise of its right to terminate pursuant to this Agreement shall in no way limit or impair its right to seek other legal or equitable remedies in connection with a breach by any other Party.

9.4 Upon termination or of this Agreement, the following events shall occur:

a. The Developer and Organizer shall immediately discontinue the offering of Residence Interests with appurtenant memberships in the Membership Program to prospective purchasers at the Club.

b. The Developer, the Organizer, Members Association and Club Manager shall immediately cease using and thereafter abstain from using all the Membership Program Marks and any name or mark similar thereto and all Membership Program Materials including, but not limited to, all of the Program Manager's personal and intellectual property utilized in connection with the operation and management of the Membership Program, except as specifically authorized by this Agreement. No property right in or privilege to use the Membership Program Marks or Membership Program Materials is created by this Agreement that will extend beyond the expiration or termination of this Agreement, except as specifically permitted by this Agreement. Failure to abstain from using the Membership Program Marks or Membership Program Materials following termination of this Agreement shall entitle the Program Manager to receive liquidated damages from the offending Party in the amount of One Thousand Dollars (\$1,000) per day in addition to any other injunctive or equitable relief available to the Program Manager.

c. The Program Manager shall honor all reservations and reservation privileges of Members or Associate Members from other Member Clubs or Associated

Clubs reserving time at the subject Club that are confirmed or accrued prior to termination or suspension and shall honor all reservations and reservation privileges of Owners at the Club reserving time at other Member Clubs or Associated Clubs that are confirmed or accrued prior to termination of this Agreement. The Developer, the Organizer, Members Association and Club Manager shall honor all reservations and reservation privileges of Members or Associate Members from other Member Clubs or Associated Clubs reserving time at the Club that are confirmed or accrued prior to termination. This requirement shall survive the termination of this Agreement.

9.5 In the event that the Developer, the Organizer, Members Association and/or Club Manager fails to perform its duties under this Agreement to the extent that a Member, Associate Member or other authorized person with a confirmed reservation at the Resort is wrongfully denied access to a Residence at the subject Club, then the Developer, the Organizer, Members Association and/or Club Manager shall immediately correct such denial of access at their own expense.

9.6 Each Party acknowledges that, unless specifically stated otherwise in this Agreement, damages cannot adequately compensate the other Parties for a breach of any of the provisions of this Agreement, and therefore the Parties agree that each Party shall be entitled to a remedy of specific performance or injunctive relief, as appropriate, in the event of a breach or threatened breach of any such provisions by any other Party, in addition to any other appropriate legal or equitable remedies.

9.7 Each Party agrees to indemnify, defend and hold harmless the other Parties from and against any and all claims, demands, obligations, deficiencies, judgments, damages, suits, losses, penalties, expenses, costs (including attorneys' fees at the trial and appellate levels) and liabilities of any kind, type or nature whatsoever directly or indirectly resulting from, arising out of or in connection with this Agreement or the operation of its business as a result of any acts or omissions by it or any of its directors, officers, partners, employees, representatives, agents, brokers, salesmen or associates.

#### **X. Miscellaneous**

10.1 This Agreement shall become effective on the date it is executed by all Parties and shall continue in force and effect until its scheduled termination or until such time as it is otherwise terminated pursuant to Article IX above.

10.2 The Program Manager reserves the right, and the Developer, the Organizer, Members Association and Club Manager acknowledge the Program Manager's right, to assign its rights and duties under this Agreement. No other Party may assign its rights and duties under this Agreement without the prior written consent of the Program Manager, which it may give or withhold in its sole discretion.

10.3 Except as may be otherwise provided herein, any notice, demand, request, consent, approval or communication under this Agreement shall be in writing and shall be deemed duly given or made: (a) when deposited, postage prepaid, in the United States mail, certified or registered mail with a return receipt requested, addressed to the Party at the address shown above; (b) when delivered personally to the Party at the address specified above; or (c) when deposited with a reliable overnight courier service, fee prepaid, with receipt of confirmation requested, addressed to the Party as specified above. A Party may designate a

different address for receiving notices hereunder by giving notice thereof to the other Parties pursuant to this Section 10.3.

10.4 The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement. All references in this Agreement to particular recitals, articles, sections and subsections are references to recitals, articles, sections and subsections of this Agreement.

10.5 In the event that any clause or provision of this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any other provision of this Agreement. Failure of any Party to insist on strict compliance with the provisions of this Agreement shall not constitute waiver of that Party's right to demand later compliance with the same or other provisions of this Agreement.

10.6 This Agreement constitutes the entire understanding and agreement among the Parties concerning the subject matter of this Agreement. All understandings between the Parties are merged into this Agreement, and there are no representations, warranties, covenants, obligations, understandings or agreements, oral or otherwise, in relation thereto between the Parties other than those incorporated herein.

10.7 This Agreement shall be governed by, and shall be construed in accordance with, the laws of the State of Florida. **THE PARTIES HEREBY WAIVE ANY RIGHT THEY MAY HAVE UNDER ANY APPLICABLE LAW TO A TRIAL BY JURY WITH RESPECT TO ANY SUIT OR LEGAL ACTION WHICH MAY BE COMMENCED BY OR AGAINST THE OTHER CONCERNING THE INTERPRETATION, CONSTRUCTION, VALIDITY, ENFORCEMENT OR PERFORMANCE OF THIS AGREEMENT OR ANY OTHER AGREEMENT OR INSTRUMENT EXECUTED IN CONNECTION WITH THIS AGREEMENT.** In the event any such suit or legal action is commenced by either Party, the other Party hereby agrees, consents and submits to the personal jurisdiction of the Circuit Court of the Ninth Judicial Circuit of Florida in and for Orange County, Florida, with respect to such suit or legal action, and each Party also hereby consents and submits to and agrees that venue in any such suit or legal action is proper in said court and county, and each Party hereby waives any and all personal rights under applicable law or in equity to object to the jurisdiction and venue in said court and county. Such jurisdiction and venue shall be exclusive of any other jurisdiction and venue.

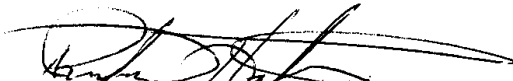
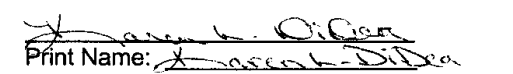
10.8 In the event any Party initiates action to enforce its rights hereunder, the prevailing Party shall recover from the non-prevailing Party its reasonable expenses, court costs and reasonable attorneys' fees, whether suit be brought or not. As used herein, expenses, court costs and attorneys' fees include expenses, court costs and attorneys' fees incurred in any appellate proceeding. All such expenses shall bear interest at the highest rate allowable under the laws of the State of Florida from the date the prevailing Party pays such expenses until the date the non-prevailing Party repays such expenses. Expenses incurred in enforcing this Section 10.8 shall be covered by this provision.

10.9 This Agreement and all of its provisions shall be binding upon and inure to the benefit of the Parties and their successors and permitted assigns. In no event shall the terms and conditions of this Agreement be deemed in any way to inure to the benefit of any person or party not expressly made a Party hereto except for successors or permitted assigns to Parties hereto.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date set forth above.

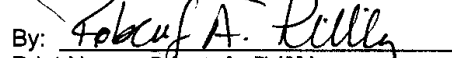
WITNESSES

  
Print Name: Andrew Hatcher  
  
Print Name: James H. DiDea


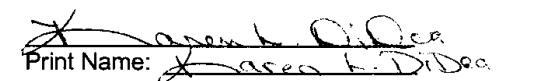
PROGRAM MANAGER:

The Ritz-Carlton Travel Company, L.L.C,  
a Delaware limited liability company

By: The Ritz-Carlton Development  
Company, Inc., Sole Member

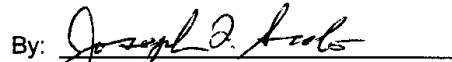
By:   
Print Name: Robert A. Phillips  
As its: Vice President

WITNESSES

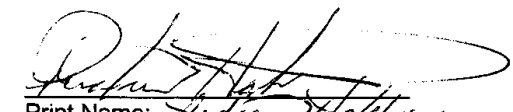
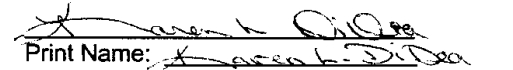
  
Print Name: Andrew Hatcher  
  
Print Name: James H. DiDea

DEVELOPER:

RC Hotels (Virgin Islands), Inc., a  
U.S. Virgin Islands corporation

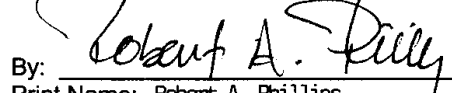
By:   
Print Name: Joseph F. Scalo  
As its: Vice President

WITNESSES


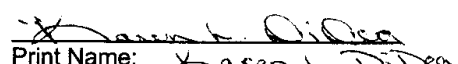
  
Print Name: Andrew Hatcher  
  
Print Name: James H. DiDea

ORGANIZER:

The Ritz-Carlton Club, St. Thomas, Inc., a  
U.S. Virgin Islands corporation


By:   
Print Name: Robert A. Phillips  
As its: Vice President

WITNESSES



  
 Print Name: Andrew H. Hatcher  
  
 Print Name: Xacsen L. Diden

MEMBERS ASSOCIATION:

Great Bay Condominium Owners Association, Inc., a U.S. Virgin Islands corporation

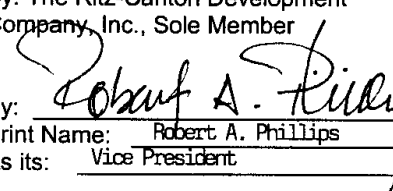
  
 By: \_\_\_\_\_  
 Print Name: Scott Schreiber  
 As its: President

WITNESSES

  
 Print Name: Andrew H. Hatcher  
  
 Print Name: Xacsen L. Diden

CLUB MANAGER:

The Ritz-Carlton Club Management Company, L.L.C., a Delaware limited liability company

By: The Ritz-Carlton Development Company, Inc., Sole Member  
  
 By: \_\_\_\_\_  
 Print Name: Robert A. Phillips  
 As its: Vice President


**NOTED IN THE CADASTRAL RECORDS  
 FOR COUNTRY/TOWN PROPERTY, BOOK FOR  
 ESTATE NAZARETH, NO. 1 RED HOOK QUARTER  
 ST. THOMAS, VIRGIN ISLANDS, (SUPPLEMENTARY  
 DECLARATION OF CONDOMINIUM FOR THE CLUB  
 AT GREAT BAY CONDOMINIUMS, ST. THOMAS,  
 VIRGIN ISLANDS.**

**Cadastral Survey/Tax Assessor Offices  
 St. Thomas, V.I. Dated: May 31, 2002  
 Phyllis Harrigan, Special Assistant to the  
 Tax Assessor for Surveys  
 Office of the Lieutenant Governor**

# EXHIBIT 7



**RATIFICATION AGREEMENT**

This Ratification Agreement ("Agreement") entered into this 30<sup>th</sup> day of May, 2014,  by and between GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC. ("GBCOA") and THE NEIGHBORHOOD ASSOCIATION, INC. ("NA")

Witnesseth:

WHEREAS, GBCOA is the condominium association for owners of Residence Interests at The Ritz-Carlton Destination Club, St. Thomas, Virgin Islands, and,

WHEREAS, NA is the record owner of a commercial condominium unit known as CU-1, which is located on the fifth floor of Gardenia Building at The Ritz-Carlton Destination Club, St. Thomas, Virgin Islands; and,

WHEREAS, NA is a member of GBCOA by virtue of its ownership of CU-1 and has the right to the exclusive use of CU-1 and the limited common areas appurtenant thereto, and to the use of the common areas of GBCOA; and,

WHEREAS, NA has recently completed a renovation of the entire fifth floor of Gardenia Building, specifically including renovation of a restaurant facility located in CU-1; and,

WHEREAS, certain of the renovations have affected the structure of the fifth floor of Gardenia Building, specifically including certain of the common areas; and,

WHEREAS, the parties wish to confirm and ratify certain of the renovation work to the extent that it affects the common areas on the fifth floor of Gardenia Building;

NOW THEREFORE, the parties covenant and agree as follows:

1. GBCOA acknowledges that NA has undertaken the following work and



renovations, and GBCOA herewith ratifies and approves said work and renovations to the extent they affect the common areas of GBCOA:

- a. Installation of Nana Wall windows on the patio balcony of the fifth floor of Gardenia Building;
- b. Painting of the interior walls of the patio balcony and ceiling of the fifth floor of Gardenia Building;
- c. Closed the patio door leading from CU-1 to the fifth floor balcony;
- d. Installed a stand-alone air conditioning unit for the patio balcony and placement on the roof of Gardenia Building;
- e. Painted and installed certain fixtures in the hallways and elevator lobby;
- f. Modified plumbing in the walls and floor of CU-1 to install four water closets, which are now integrated into the existing building plumbing;
- g. Installed a fully functioning bar on the patio balcony of the fifth floor of Gardenia Building, including modification of the plumbing and sewage systems to provide service to the bar;
- h. Relocated the air handler for CU-1 to the newly expanded kitchen;
- i. Redesigned the interior space of CU-1, including attachment of fixtures to the walls and structure of CU-1;
- j. Installed separate electric meter for CU-1, and upgraded electric service to the fifth floor of Gardenia Building;
- k. Installed a 500 gallon propane tank on certain common areas outside the front of

SW

Gardenia Building, and installed a gas line on the outside of Gardenia Building to provide service to the fifth floor;

1. Placed a Dumpster on certain common areas for the sole use of the Grand Palazzo Club located in CU-1;

m. Placed a separate container for cooking grease on certain common areas of GBCOA;

2. GBCOA further consents to and ratifies the placement of a sign on the outside of Gardenia Building, and installation of signs in the elevator of Gardenia Building indicating the location of the Grand Palazzo Club.

3. GBCOA further consents to and ratifies the placement of additional signs on common areas of GBCOA to indicate the location of the Grand Palazzo Club.

4. GBCOA further consents to the use of the GBCOA parking lot for use by employees of the Grand Palazzo Club, on a non-exclusive basis.

5. In consideration of the foregoing, NA warrants that all work referenced above was done in accordance with plans from properly qualified and licensed design professionals, and that all work has been performed by fully qualified and licensed contractors and subcontractors, and that all work has been done in compliance with applicable building codes and Marriott and Ritz-Carlton brand standards.

6. NA shall, at its sole cost and expense, maintain, repair, and replace all work and equipment, and to keep all improvements and equipment in serviceable condition, and in full compliance with all applicable codes, regulations, laws, and Marriott and Ritz-Carlton brand



standards.

7. In the event that any person or entity, either directly or indirectly, acquires more than 33% of the voting interest in NA, or in the event that the majority of members of the NA Board of Directors is not made up of members who independently own their Residence Interests, then GBCOA may, in its sole and absolute discretion, withdraw this ratification and this agreement shall become null and void and of no legal effect. In the event that GBCOA elects to terminate this agreement, then NA agrees, at its sole cost and expense, to restore the premises to its condition before the work referenced herein was undertaken, or pay to GBCOA an amount equal to the cost of said restoration. In that event NA further covenants and agrees that it will undertake no work, maintenance, repairs, or alterations to any of the common areas or limited common areas of Gardenia Building, specifically including the common areas and limited common areas on the fifth floor of Gardenia Building, without the express written consent of GBCOA.

8. This agreement may be executed in counterparts and faxed or scanned signatures shall be as binding as original signatures.

GREAT BAY CONDOMINIUM  
OWNERS ASSOCIATION, INC.  
  
By: John Doyle  
President  
\_\_\_\_\_  
THE NEIGHBORHOOD ASSOCIATION, INC.



*Great Bay Condominium Owners Association/Neighborhood Association*  
Ratification Agreement  
May 29, 2014  
Page 5

*Smcutrona*

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By: Salvatore Cutrona  
President

*SM*

**A.000445**

# EXHIBIT 8

## CONDOMINIUM DEED

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THIS INDENTURE is made the 20 day of September, 2017 by and between The Neighborhood Association, Inc., a not for profit corporation organized and existing under the laws of the Virgin Islands of the United States, whose address is 6910 Great Bay, Gardenia Building, 5<sup>th</sup> Floor, St. Thomas, Virgin Islands 00802-2552 (hereinafter "Grantor") and Great Bay Condominium Owners Association, Inc., a not for profit Virgin Islands corporation whose address is 6910 Great Bay, St. Thomas, Virgin Islands 00802 ("Grantee").

WHEREAS, pursuant to the provisions of the Declaration of Condominium of Great Bay Condominiums, recorded on May 31, 2002, in the Office of the Recorder of Deeds in St Thomas, Virgin Islands, as amended by various amendments thereafter, including the Fourth Amendment thereto, dated June 6, 2006, (hereinafter " the Declaration") the Grantor is authorized to convey to Grantee a commercial unit, including the Unit hereinafter described and conveyed, and

WHEREAS, under the provisions of the Declaration the Grantee is obligated to accept such conveyance, and

WHEREAS, the instant conveyance is made free of any service contracts or other obligations except as provided in the Declaration, By Laws and Rules and Regulations of the Grantee,

NOW, THEREFORE, this agreement,

WITNESSETH: That the Grantor does hereby grant to Grantee and Grantee's successors and assigns, the real property described as follows:

The Unit known as CU-1 (hereinafter the "Unit") in the Great Bay Condominium, at the property known as Parcel Nos. 4-2, 4-3, 4-4, 4-5, 4-6, 4-7, 4-8, 5-33A, 4-10, Remainder Parcel No. 4 (Southeastern Portion) Estate Nazareth, No. 1 Red Hook Quarter, St. Thomas, U.S. Virgin Islands and Remainder Parcel No. 4 (Southwestern Portion) Estate Nazareth, No. 2 Red Hook Quarter, St. Thomas, U.S. Virgin Islands, designated and described as such in the Declaration of Condominium for Great Bay Condominium Declaration and the Supplementary Declaration of Condominium for the Club at Great Bay Condominium (collectively, the "Declaration") reſpectively establishing plans for condominium ownership and interval ownership of said buildings and said property, made by RC Hotels (Virgin Islands), Inc. under the Condominium Act of the Virgin Islands of the United States (Chapter 33, Title 28, Virgin Islands Code), dated May 10, 2002 and recorded in the Office of the Recorder of Deeds for St. Thomas and St. John, U.S. Virgin Islands on May 31, 2002, as Document Nos. 2002002741 and 2002002742, respectively, as subsequently expanded and amended,





# EXHIBIT 9

## Carolyn

---

**From:** Lauren Wright  
**Sent:** Tuesday, December 4, 2018 9:16 AM  
**To:** Carolyn  
**Subject:** FW: NA - Deed Transfer Agreement & Deed

Good morning, Carolyn:

If this makes for a better email exhibit to the NA complaint, feel free to use it in place of the other exhibit.

Thank you!

Lauren N. Wright, Esquire  
Law Office of W. Mark Wilczynski, P.C.  
Palm Passage Suite C20-22  
P.O. Box 1150 St. Thomas, U.S. Virgin Islands 00804  
Mobile: (340) 626-8363  
Telephone: (340) 774-4547  
Fax No: (340) 774-4759  
Lauren@usvilaw.com  
V.I. Bar No. 2036

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---

**From:** Abigail Chung <[abbeychung@msn.com](mailto:abbeychung@msn.com)>  
**Sent:** Tuesday, December 4, 2018 8:35 AM  
**To:** Lauren Wright <[Lauren@usvilaw.com](mailto:Lauren@usvilaw.com)>; Mark Wilczynski <[mark@usvilaw.com](mailto:mark@usvilaw.com)>  
**Cc:** John (Gmail) Doyle <[jdoylemwe@gmail.com](mailto:jdoylemwe@gmail.com)>; Tom Doyle <[tdoyle70@yahoo.com](mailto:tdoyle70@yahoo.com)>  
**Subject:** FW: NA - Deed Transfer Agreement & Deed

Lauren,

As requested, I am forwarding a copy of the memo where GBCOA rejected the attempted transfer of the CU-1 Deed.

Abbey Chung

---

**From:** Abbey Chung <[abbeychung@msn.com](mailto:abbeychung@msn.com)>  
**Date:** Thursday, November 2, 2017 at 10:37 AM  
**To:** Sal Cutrona <[salcut@comcast.net](mailto:salcut@comcast.net)>  
**Cc:** "John (Gmail) Doyle" <[jdoylemwe@gmail.com](mailto:jdoylemwe@gmail.com)>, Marc Betesh <[mbetesh@kbalease.com](mailto:mbetesh@kbalease.com)>, Henry Troy <[hptroy@embarqmail.com](mailto:hptroy@embarqmail.com)>, Enzo Orsini <[enzo.orsini@hpe.com](mailto:enzo.orsini@hpe.com)>, "Shuster, M.D. Michael" <[mshustermd@gmail.com](mailto:mshustermd@gmail.com)>, Craig Sacco <[Craig.Sacco@ritzcarlton.com](mailto:Craig.Sacco@ritzcarlton.com)>, "Leighton-herrmann, Marsha"

<[Marsha.Leighton-Herrmann@ritzcarlton.com](mailto:Marsha.Leighton-Herrmann@ritzcarlton.com)>, John Hearn <[John.Hearns@marriott.com](mailto:John.Hearns@marriott.com)>, "Sobeck, Stephanie" <[Stephanie.Butera@mwwc.com](mailto:Stephanie.Butera@mwwc.com)>, Steve Redan <[steve@kpmedi.com](mailto:steve@kpmedi.com)>, Michael Gick <[mmgick@icloud.com](mailto:mmgick@icloud.com)>, Tom Doyle <[tdoyle70@yahoo.com](mailto:tdoyle70@yahoo.com)>

**Subject:** Re: NA - Deed Transfer Agreement & Deed

Sal,

I am writing to inform you that GBCOA reject's the tender of the CU-1 deed and that the 2017 Maintenance Fee/Assessment of \$159,083.06 and the 2017 Reserve for Replacement of \$59,000.00 must be paid immediately since NA has not complied with the terms outlined in the email of 9/11/17.

Abbey

---

**From:** Abbey Roberts Chung <[abbeychung@msn.com](mailto:abbeychung@msn.com)>

**Date:** Monday, September 11, 2017 at 1:20 PM

**To:** Sal Cutrona <[salcut@comcast.net](mailto:salcut@comcast.net)>

**Cc:** John Doyle <[jdoylemwe@gmail.com](mailto:jdoylemwe@gmail.com)>, Marc Betesh <[mbetesh@kbalease.com](mailto:mbetesh@kbalease.com)>, Henry Troy <[hptroy@embarqmail.com](mailto:hptroy@embarqmail.com)>, Enzo Orsini <[enzo.orsini@hpe.com](mailto:enzo.orsini@hpe.com)>, "Shuster, M.D. Michael" <[mshustermd@gmail.com](mailto:mshustermd@gmail.com)>, "Sacco, Craig" <[Craig.Sacco@ritzcarlton.com](mailto:Craig.Sacco@ritzcarlton.com)>, Marsha Leighton-Herrmann <[marsha.leighton-herrmann@ritzcarlton.com](mailto:marsha.leighton-herrmann@ritzcarlton.com)>, "Hearns, John" <[John.Hearns@marriott.com](mailto:John.Hearns@marriott.com)>, "Sobeck, Stephanie" <[Stephanie.Butera@mwwc.com](mailto:Stephanie.Butera@mwwc.com)>, Steve Redan <[steve@kpmedi.com](mailto:steve@kpmedi.com)>, Michael Gick <[mmgick@icloud.com](mailto:mmgick@icloud.com)>, Tom Doyle <[tdoyle70@yahoo.com](mailto:tdoyle70@yahoo.com)>

**Subject:** Re: NA - Deed Transfer Agreement & Deed

Sal,

Thank you, but as noted below the Settlement Funds need to be transferred simultaneously per the second bullet in my email.

Abbey

Sent from my iPhone

On Sep 11, 2017, at 11:15 AM, Salvatore M. Cutrona, Sr. <[salcut@comcast.net](mailto:salcut@comcast.net)> wrote:

Abbey:

Thank you for your prompt response.

Marc and I have spoken.

We are willing to take to the NA Board for approval later today, the removal of the turn back provision in the Deed Transfer Agreement - giving GBCOA an unrestricted Deed and full authority on the CU-1 use after the Deed is transferred (given the current situation re: Irma), while leaving the settlement funds in escrow until a mutually agreed upon distribution of those funds is agreed upon by both GBCOA and NA. And, as we had agreed the \$21,098 will be used to assist in covering the NA ongoing annual reporting requirements.

Please get back to me on this as soon as possible.

Salvatore M. Cutrona, Sr.  
917-543-8529  
[salcut@comcast.net](mailto:salcut@comcast.net)

On Sep 11, 2017, at 9:56 AM, Abigail Chung <[abbeychung@msn.com](mailto:abbeychung@msn.com)> wrote:

Sal and Marc,

We received your email regarding the Deed Transfer. The GBCOA board met yesterday and unanimously agreed to the following:

- We can accept only an unrestricted deed; i.e., No condition\option that it will revert back to NA if no longer a restaurant or offering any food service;
- The Settlement Funds (\$440K + \$240) less any attorney fees outstanding are simultaneously transferred to GBCOA as part of the CU-1 unit;
- The Settlement Funds will be used for CU-1; and,
- The \$21,990 will be transferred from the Reserve for Replacement as noted in your email and will be used to help offset the future reporting costs of NA.

These conditions must be met on or before November 1, 2017, or NA will be responsible for the 2017 Maintenance Fee/Assessment and the 2017 Reserve for Replacement. Furthermore, the 2018 Maintenance Fee/Assessment and the 2018 Reserve for Replacement will be billed to NA, and this may be a further liability unless the Deed Transfer takes place shortly after that date.

Abbey Chung  
Tom Doyle

---

**From:** Sal Cutrona <[salcut@comcast.net](mailto:salcut@comcast.net)>  
**Date:** Sunday, September 10, 2017 at 12:30 PM  
**To:** Tom Doyle <[tdoyle70@yahoo.com](mailto:tdoyle70@yahoo.com)>, Abbey Roberts Chung <[abbeychung@msn.com](mailto:abbeychung@msn.com)>  
**Cc:** John Doyle <[jdoylemwe@gmail.com](mailto:jdoylemwe@gmail.com)>, Marc Betesh <[mbetesh@kbalease.com](mailto:mbetesh@kbalease.com)>, Henry Troy <[hptroy@embarqmail.com](mailto:hptroy@embarqmail.com)>, Enzo Orsini <[enzo.orsini@hpe.com](mailto:enzo.orsini@hpe.com)>, "Shuster, M.D. Michael" <[mshustermd@gmail.com](mailto:mshustermd@gmail.com)>, Sal Cutrona <[salcut@comcast.net](mailto:salcut@comcast.net)>, "Sacco, Craig" <[Craig.Sacco@ritzcarlton.com](mailto:Craig.Sacco@ritzcarlton.com)>, Marsha Leighton-Herrmann <[marsha.leighton-herrmann@ritzcarlton.com](mailto:marsha.leighton-herrmann@ritzcarlton.com)>, "Hearns, John" <[John.Hearns@marriott.com](mailto:John.Hearns@marriott.com)>, "Sobeck, Stephanie" <[Stephanie.Butera@mwwc.com](mailto:Stephanie.Butera@mwwc.com)>  
**Subject:** NA - Deed Transfer Agreement & Deed

Tom and Abbey:

The NA Board of Directors met this morning in a "special" Board Meeting.

In attendance were all NA board members, except for Henry Troy, who we believe is in Italy, and NA counsel, Maria Hodge, Esq.

In this meeting, the following was motioned:

1. Motion #1:

1. The Deed Transfer Agreement and Deed, along with the motion to liquidate NA and dissolve its corporate structure were as approved at the NA Board meeting of August 11, 2017 were retracted.
  1. As a result, NA will not move forward to dissolve NA corporate structure, but rather shelve it relying on your support and that of Marsha's as Director of Finance to file the required annual reporting and fees, if any.
  2. As discussed funding of \$21,990 is included in the 12-30-16 Replacement Reserve that will transfer to GBCOA upon transferring the Deed, which is above the Armstrong required funding, to help offset this ongoing annual reporting requirement.
  3. We appreciate your support in accomplishing this, including the annual meeting conduct in conjunction with the GBCOA, to minimize costs.

2. Motion #2:

1. A revised Deed Transfer Agreement (Draft #6) and the Deed (Draft #6), which incorporate changes discussed in our meeting of September 6, 2017, were approved. A summary of the changes as shown in the edited versions of both documents, which are included below are as follows:
  1. Deed Transfer Agreement:
    1. Added the following to the last paragraph of Section VII OTHER DELIVERABLES AT OR PRIOR TO CLOSING:
      1. ***....and all Grantee operating assessments and CU-1 maintenance and operating expenses will recommence as a responsibility of Grantor as of the effective date of the transfer back of the CU-1 Deed to NA going forward.***
    2. Changed the Signature month to "**September.**"
  2. Deed:
    1. Changed date of Deed to the month of "**September.**"
    2. Removed note re: assessed value. Marsha will be giving us number to insert in there upon filing.
    3. Changed signature month to "**September.**"

—DEED TRANSFER AGREEMENT - EDITED VERSION DRAFT #6

—DEED TRANSFER AGREEMENT - CLEAN COPY

—DEED - EDITED VERSION #6

—DEED - CLEAN COPY

—EXECUTED COPY OF DEED TRANSFER AGREEMENT 9-10-17

Salvatore M. Cutrona, Sr

Phone: 917-543-8529

Email: [salcut@comcast.net](mailto:salcut@comcast.net)

# **EXHIBIT 12**

IN THE SUPERIOR COURT OF THE OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

GREAT BAY CONDOMINIUM OWNERS )  
ASSOCIATION, INC. )

CASE NO: ST-18-CV-768

Plaintiff, )

vs. )

THE NEIGHBORHOOD ASSOCIATION, INC. )

Defendant. )

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SUPERIOR COURT

ANSWER

COMES NOW the defendant, The Neighborhood Association, Inc. (Hereinafter sometimes NA" ) by and through its undersigned counsel, answering Plaintiff's Complaint, and states:

1. Admitted.
2. Admitted.
3. Admitted.
4. Defendant admits that it is a not for profit corporation organized and existing under the laws of the Virgin Islands, but denies all other allegations contained in paragraph 4.

5. Defendant admits that it was incorporated on or about September 28, 2005.  
Defendant admits that a true copy of the Articles of Incorporation of The Neighborhood Association, Inc, is attached to Plaintiff's complaint, but denies that the same is designated Exhibit 1. Defendant admits that the Articles of Incorporation were recorded in the Office of the Recorder of Deeds on or about November 11,

COPY

A.000456



2008. Defendant states affirmatively that the Articles of Incorporation speak for themselves. All other allegations contained in paragraph 5 are denied.
6. Defendant states affirmatively that there is no document attached to the Complaint designated Exhibit 1. Defendant further states that the Articles of Incorporation of the Association speak for themselves. All other allegations contained in paragraph 6 are denied.
  7. Defendant states affirmatively that there is no document attached to the Complaint designated Exhibit 2 or Exhibit 3. Defendant admits that RC Hotels (Virgin Islands), Inc. executed a Fourth Amendment to Declaration Establishing a Plan for Condominium Ownership of Parcel 4-2 and 4-3 Estate Nazareth, No. 1 Red Hook Quarter, St. Thomas, Virgin Islands, on November 15, 2005, and filed the same with the Recorder of Deeds on or about December 9, 2005 as Document No. 2005012779. Defendant admits that a Fourth Amendment to Supplementary Declaration of Condominium for the Club at Great Bay Condominium was executed on or about June 6, 2006, and filed with the Recorder of Deeds on or about July 18, 2006 as Document No. 2006007164. Defendant submits that aforesaid documents speak for themselves. All other allegations contained in paragraph 7 are denied.
  8. Defendant states affirmatively that the "2005 Amendment" speaks for itself, the quoted language being only a small part of the document and of the paragraph cited. All other allegations contained in paragraph 8 are denied.
  9. Defendant expressly denies that the 2005 Amendment contains the statement alleged. All other allegations contained in paragraph 9 are denied.

10. Defendant states affirmatively that the 2005 Amendment speaks for itself. All other allegations contained in paragraph 10 are denied.
11. Defendant denies that there is an Exhibit 4 attached to the Complaint. Defendant admits that on or about December 20, 2008, RC Hotels (Virgin Islands), Inc. conveyed title to The Neighborhood Association, Inc. to the real property described as "The Unit known as CU-1 (hereinafter the "Unit") in the Great Bay Condominium..." by deed filed with the Recorder of Deeds on or about December 30, 2008 as Document No. 200812283 (the "Deed"). Defendant states that the Deed speaks for itself. All other allegations contained in paragraph 11 are denied.
12. Defendant denies that there is an Exhibit 5 attached to the Complaint. Defendant admits that RC Hotels (Virgin Islands), Inc. subsequently waived the Deed Restrictions contained in the 2008 Deed, referred to in paragraph 11, by waiver executed on January 24, 2014, and filed with the Recorder of Deeds on or about February 5, 2014 as Document No. 2014000751. All other allegations contained in paragraph 12 are denied.
13. Defendant denies that an Exhibit 2 is attached to the Complaint. Defendant states affirmatively that the "2005 Amendment" speaks for itself. All other allegations contained in paragraph 13 are denied.
14. Defendant denies that an Exhibit 6 is attached to the Complaint. Defendant admits that a certain document entitled Supplementary Declaration of Condominium for the Club at Great Bay Condominium was executed on or about April 11, 2002 and filed with the Recorder of Deeds on or about May 31, 2002 as Document No. 20020022742. Defendant states affirmatively that the Supplementary Declaration

- speaks for itself, and defendant denies that the quotation in the complaint fully or properly quotes the same. All other allegations set forth in paragraph 14 are denied.
15. Paragraph 15 contains only an alleged statement of law and not of fact, and therefore requires no response. Defendant denies that the language set forth in paragraph 15 is not relevant to the instant dispute.
16. Defendant denies that there is an Exhibit 6 attached to the complaint. Defendant denies the remaining allegations contained in paragraph 16.
17. Paragraph 17 contains only an alleged statement of law and not of fact, and therefore requires no response. Denied insofar as this allegation purports to describe any legal restriction applicable to the instant dispute.
18. Defendant denies that there is an Exhibit 6 attached to the Complaint. Defendant states affirmatively that the Supplementary Declaration of Condominium speaks for itself, and as a whole, along with all relevant amendments thereto, and to the Declaration.
19. Denied.
20. Denied.
21. Denied.
22. Defendant denies that there is an Exhibit 7 attached to the Complaint. Defendant admits that on or about May 30, 2014, GBCOA and NA entered into a "Ratification Agreement". All other allegations contained in paragraph 22 are denied.
23. Defendant denies that there is an Exhibit 7 attached to the Complaint. Defendant states affirmatively that the "Ratification Agreement" speaks for itself. All other allegations contained in paragraph 23 are denied.

24. Admitted.
25. Denied.
26. Denied.
27. Denied.
28. Defendant denies that there is an Exhibit 8 attached to the complaint. Defendant admits that on or about September 20, 2017, The Neighborhood Association, Inc. executed a Condominium Deed conveying title to Unit CU-1 to the Plaintiff, GBCPA. All other allegations contained in paragraph 28 are denied.
29. Defendant admits that it neither sought nor obtained unanimous consent of the Members of the Neighborhood Association, Inc. to the conveyance of title to Unit CU-1 to GBCOA. Defendant denies that such unanimous consent was required. All other allegations contained in paragraph 29 are denied.
30. Denied.
31. Defendant admits that GBCOA purported to “reject” delivery and tender of the Condominium Deed to Unit CU-1, but Defendant denies that GBCOA had any legal authority to do so, such that the purported rejection was null and void. All other allegations contained in paragraph 31 are denied.
32. Denied.
33. Denied.
- FIRST CAUSE OF ACTION – CANCELLATION OF DEED AS VOID FOR FAILURE TO COMPLY WITH DECLARATION OF CONDOMINIUM – COMMON ELEMENTS RESTRICTION.**
34. Defendant repeats and realleges its answers to paragraphs 1 through 33 as though here fully set forth.

35. Denied.

36. Denied.

**SECOND CAUSE OF ACTION - CANCELLATION OF DEED AS VOID FOR FAILURE TO COMPLY WITH DECLARATION OF CONDOMINIUM – EXISTING ENCUMBRANCES**

37. Defendant repeats and realleges its answers to paragraphs 1 through 36 as though here fully set forth.

38. Answering the allegations of paragraph 38, Defendant states that the “2005 Amendment” to the Declaration of Condominium speaks for itself. Defendant denies that any document marked “Exhibit 2” was attached to the Complaint. All other allegations contained in paragraph 38, express or implied, are denied.

39. Answering the allegations of paragraph 39, Defendant states that the “2005 Amendment” to the Declaration of Condominium speaks for itself. Defendant denies that any document marked “Exhibit” was attached to the Complaint. All other allegations contained in paragraph 39, express or implied, are denied.

40. Defendant admits that it became a member of GBCOA when it acquired title to the Commercial Unit CU-1 by deed dated December 20, 2008, from RC Hotels (Virgin Islands) Inc.

41. Denied. Defendant denies that any document designated Exhibit 3 is attached to the Complaint. Defendant admits that during the period of its ownership of Commercial Unit CU-1, it was responsible for costs and expenses of the operation and ownership of Commercial Unit CU-1, but denies that it is responsible for such costs or expenses for any period following the termination of its ownership.

42. Denied. Defendant denies that it is obligated to pay membership dues or assessments to GBCOA related to ownership of the Commercial Unit CU-1, for any period subsequent to the termination of its ownership, when title was conveyed to GBCOA by delivery of deed on September 26, 2017, and Defendant further denies that it is obligated to pay membership dues or assessments for Unit CU-1 that had not been duly assessed to such unit, prior to the termination of its ownership.

42. Denied.

43. Denied. Defendant denies that there were any 2017 Annual Dues or Assessments outstanding or owed as of the date of termination of its ownership of Commercial Unit CU-1.

44. Denied.

45. Denied.

46. Denied.

47. Denied. Defendant further denies that any document designated Exhibit 7 is attached to the complaint.

48. Denied.

49. Denied.

**THIRD CAUSE OF ACTION – CANCELLATION OF DEED AS VOID FOR FAILURE TO CONTRACT.**

50. Defendant repeats and realleges its answers to paragraphs 1 through 36 as though here fully set forth.

51. Defendant admits that for a period of time, The Neighborhood Association and GBCOA engaged in negotiations regarding the future of Commercial Unit CU-1. All other allegations contained in paragraph 51 are denied.

52. Denied.

53. Denied.

54. Denied.

55. Denied.

56. Denied.

57. Denied. Defendant admits that GBCOA purported to reject delivery of the deed to Unit CU-1, but Defendant affirmatively denies that, under the GBCOA Condominium Declaration stating and defining the terms of existence of GBCOA, it had any discretion to do so, and that GBCOA was not required to “accept” the deed for the same to be effective, as the Declaration expressly stated that such consent by GBCOA was not required.

58. Denied.

#### **FOURTH CAUSE OF ACTION – QUIET TITLE TO COMMERCIAL UNIT CU-1**

59. Defendant repeats and realleges its answers to paragraphs 1 through 58 as though here fully set forth.

60. Defendant denies that a document designated Exhibit 4 is attached to the Complaint. Defendant admits the remainder of the allegations in paragraph 60.

61. Defendant denies that any document designated Exhibit 1, 2 or 3 is attached to the Complaint. Defendant denies the remainder of the allegations in paragraph 61.

62. Denied.

63. Defendant denies that any document designated Exhibit 8 is attached to the Complaint. Defendant admits that GBCOA purported to refuse delivery of the deed to Commercial Unit CU-1 but Defendant denies that, under the GBCOA Condominium

Declaration, as amended, stating and defining the terms of existence of GBCOA, it had no discretion to do so, and it had no legal authority to refuse delivery of the deed or to “disclaim” the transfer of title, as the Declaration expressly stated that consent to transfer of title to the Commercial Unit, by GBCOA, was not required.

64. Denied.

65. Defendant admits that in the past, it was the owner of Commercial Unit CU-1. All other allegations contained in paragraph 65 are denied.

66. Defendant denies that Plaintiff is entitled to a declaration as described in this paragraph.

**FIFTH CAUSE OF ACTION – DECLARATORY JUDGMENT (5 V.I.C. 1261)**

67. Defendant repeats and realleges its answers to paragraphs 1 through 66 as though here fully set forth.

68. Defendant denies that Plaintiff is entitled to a Declaratory Judgment as described in paragraph 68.

68 a. Defendant denies that The Neighborhood Association, Inc. is the owner of the property known as “Commercial Unit CU-1”, as described in paragraph 68a.

68b. Defendant denies that the conveyance of the property described as Commercial Unit CU-1, by the Neighborhood Association, Inc. to the Great Bay Condominium owners Association is void for failure to comply with the common elements restriction on conveyance of commercial units, or for any other reason.

68c. Defendant denies that the conveyance of the property described as Commercial Unit CU-1, by the Neighborhood Association, Inc. to the Great Bay Condominium owners



Association is void for failure to satisfy the condition precedent to transfer, that the commercial unit be free of “other obligations”, or for any other reason.

68d. Defendant denies that the conveyance of the property described as Commercial Unit CU-1, by the Neighborhood Association, Inc. to the Great Bay Condominium owners Association is void for failure to contract, or for any other reason.

68e. Defendant denies that the conveyance of the property described as Commercial Unit CU-1, by the Neighborhood Association, Inc. to the Great Bay Condominium owners Association is void for rejection and non-acceptance of the title and deed by GBCOA, or for any other reason.

68f. Defendant denies that the purported disclaimer of ownership by Great Bay Condominium Owners Association, invalidates the conveyance of Unit CU-1.

#### **AFFIRMATIVE DEFENSES**

1. Plaintiff’s complaint fails to state a cause of action against defendant upon which relief can be granted.
2. Plaintiff’s claims are barred by the doctrine of unclean hands.
3. Plaintiff’s claims are barred by the doctrine of equitable estoppel.
4. Plaintiff’s claims are barred by the doctrine of waiver.
5. Plaintiff’s claims are barred by the doctrine of laches
6. Plaintiff’s claims are in violation of its own Declaration of Condominium, which governs and dictates its powers, rights and obligations, concerning the transfer of CU-1 and other matters related to this action, and Plaintiff is without authority to impose conditions of consent or other conditions upon Defendant’s right to transfer title of Unit CU-1 to Plaintiff.

7. Plaintiff's claims are barred by failure to comply with conditions precedent.
8. Defendant reserves the right to amend and add any affirmative defenses that may be appropriate upon further investigation and discovery.

WHEREFORE, Defendant prays that this court enter judgment in its favor, dismissing the plaintiff's complaint, awarding its legal fees and costs incurred in the defense of this action, and awarding such other and further relief as the court deems just in the premises.

Dated: January 4, 2019

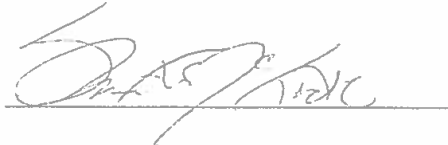


Maria Tankenson Hodge (VI Bar #170)  
Hodge & Hodge  
1340 Taarneberg, St. Thomas, V.I. 00802  
Phone: (340) 774-6845  
Fax: (340) 714-1848  
[maria@hodgelawvi.com](mailto:maria@hodgelawvi.com)

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7 day of January, 2019, a true and correct copy of the foregoing Answer was served via first class mail, postage pre-paid, with a courtesy copy sent via email, to:

W. Mark Wilczynski, Esq.  
Law Offices of W. Mark Wilczynski, P.C.  
Palm Passage, Suite C20-22  
P.O. Box 1150  
St. Thomas, VI 00804-1150  
Phone: (340) 774-4547  
Fax: (340) 774-4749  
Email: [mwilczynski@usvilaw.com](mailto:mwilczynski@usvilaw.com)  
*Counsel for Plaintiff*



# **EXHIBIT 13**

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF SAINT THOMAS AND SAINT JOHN

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SUPERIOR COURT

_____ )	
GREAT BAY CONDOMINIUM OWNERS )	) NO.: ST-19-CV- <del>ST-19-CV-650</del>
ASSOCIATION, INC., )	
Plaintiff, )	) ACTION FOR BREACH AND DEBT
-v- )	)
THE NEIGHBORHOOD ASSOCIATION, INC., )	) JURY TRIAL DEMANDED
Defendant. )	)
_____ )	

**COMPLAINT**

**NOW COMES** the Plaintiff, GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC., by and through its attorney, W. MARK WILCZYNSKI, ESQ., of the LAW OFFICES OF W. MARK WILCZYNSKI, P.C., and hereby asserts this claim for money damages for breach of contract and debt, as follows:

**JURISDICTION, VENUE & PARTIES**

1. This Court has jurisdiction over this action and these parties pursuant to 4 V.I.C. § 76(a), as amended.
2. Venue is proper in the Division of St. Thomas and St. John pursuant to 4 V.I.C. § 78, as all the parties are located in St. Thomas; the underlying transactions occurred on St. Thomas; the underlying property is located in St. Thomas; and the Defendant is subject to service of process in this Division.

3. Plaintiff GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC. (“GBCOA”) is a not-for-profit V.I. Corporation which is the condominium association for unit owners for the Ritz-Carlton Club in St. Thomas.

4. Defendant NEIGHBORHOOD ASSOCIATION, INC. (“NA”) is a not-for-profit V.I. Corporation which owns a condominium unit identified as Commercial Unit (“CU-1”) and operated as the *Grand Palazzo Club* in Building G at the Ritz-Carlton Club, St. Thomas, Virgin Islands.

**COUNT ONE: DEBT – UNPAID ASSESSMENTS 2017-19**

5. As part of its ownership of CU-1, NA was liable to GBCOA for annual maintenance fees for the unit.

6. This maintenance fee requirement was similar to annual fees paid by all GBCOA members and was never disputed in the years prior to the current dispute for funds which now exists between GBCOA and NA.

7. NA was invoiced for 2017 maintenance fees in the amount of \$188,330.61 but has refused to pay. A copy of the 2017/18 Invoice is attached as **Exhibit A**.

8. NA was invoiced for 2018 maintenance fees in the amount of \$96,200.94 but has refused to pay.

9. NA was invoiced for 2019 maintenance fees in the amount of \$169,524.00 but refused to pay. A copy of the 2019/20 Invoice is attached as **Exhibit B**.

10. NA owes GBCOA for each of these annual assessments.

**COUNT TWO: DEBT – JANUARY 2017 SETTLEMENT**

11. On August 1, 2012, GBCOA and NA initiated a lawsuit for, among other things, the defective design and construction of the Fifth Floor Lounge (“CU-1”) in Building G of the Ritz-Carlton Club. See **Exhibit C**, Complaint in *The Neighborhood Ass’n, et al. v. Miller, Legg & Associates, Inc. f/k/a Ivey, Harris & Walls, Inc. et al.*, Civ. No. ST-12-CV-424 (V.I. Super Ct. 2012) (the “*Miller Legg case*”).

12. The lawsuit also addressed defects in the design and construction of the common areas appurtenant to the CU-1 Unit, making GBCOA a necessary party under both the Condominium Declaration and the Virgin Islands Condominium Act. The bulk of the renovations to the fifth-floor lounge were to those common areas for which GBCOA is obligated to maintain.

13. In early 2017 GBCOA and NA entered into confidential settlements<sup>1</sup> with defendants Steven Feller, P.E., LLC and Nichols, Broach, Wurst, Wolfe & Associates, Inc. f/k/a Nichols Broach Sandoval & Associates, Inc.

14. On December 14, 2017, the management company for both associations, RC St. Thomas, LLC, notified GBCOA that it would retain GBCOA’s portion of the settlement proceeds in NA’s reserve account until both Associations provided the management company with joint instructions for the disbursement of funds.

15. GBCOA has informed NA that these are GBCOA funds based upon the derivation of the claims and has demanded release of these funds.

16. NA is holding these funds and refuses to release these funds to GBCOA.

---

<sup>1</sup> The settlements referenced in Counts 2 and 3 are protected by non-disclosure agreements which provide for confidential disclosure to courts. Upon entry of a protective order in this matter, the amounts in dispute for Counts 2 & 3 of this Complaint will be provided to this Court.

**COUNT THREE: DEBT: MAY 2017 SETTLEMENT**

17. In May 2017, GBCOA and NA entered into confidential settlement agreements with the remaining defendants in the *Miller Legg* case: Miller, Legg & Associates, Inc. f/k/a Ivey, Harris & Walls, Inc. and Bliss & Nyitray, Inc.

18. GBCOA and NA agreed that the May 2017 settlement proceeds could be held in escrow by then-counsel for both parties, Maria Hodge, Esq.

19. GBCOA informed NA that these are GBCOA funds based upon the derivation of the claims and demanded release of the May 2017 settlement funds.

20. NA's attorney Maria Hodge, Esq. continues to hold the May 2017 Settlement funds and NA has thus far refused to agree to the release of these funds to GBCOA.

**COUNT FOUR: BREACH OF CONTRACT – MAY 2014 AGREEMENT**

21. Beginning in early 2014, NA commenced the renovation of the CU-1 unit and appurtenant supporting structures to remedy the defects giving rise to the *Miller-Legg* complaint.

22. The scope and specifics of the renovations were not formally approved by GBCOA prior to commencement.

23. In May 2014, GBCOA and NA entered into a *Ratification Agreement* whereby GBCOA ratified the scope of the renovations in consideration for, among other things, protection of GBCOA's membership in the event a third party acquired more than one-third of the voting interest in NA. Upon such an occurrence, NA agreed to be

financially responsible for the renovations of CU-1 (by escrowing sufficient funds) or obligated to restore the unit to its previous condition if GBCOA exercised its rights under the *Ratification Agreement*. See **Exhibit D**, *Ratification Agreement*.

24. In 2017, the parties began negotiations regarding a possible transfer of the CU-1 unit from NA to GBCOA. GBCOA repeatedly raised NA's obligations under the Ratification Agreement, particularly in regard to the escrowing of funds. Those negotiations were unsuccessful.

25. Since 2017, more than one-third of NA's voting interest has been controlled by a third party (MVC Trust), giving rise to GBCOA's option under the *Ratification Agreement*.

26. On August 19, 2019, GBCOA exercised its option under the *Ratification Agreement* in a letter demanding that NA immediately escrow the funds necessary to restore the premises (estimated to be no less than \$800,000.00). See **Exhibit E**, Letter to The Neighborhood Association, Inc. dated August 19, 2019.

27. NA refused to repair or return the premises as required and NA has refused to escrow the funds as required under the *Ratification Agreement*.

**WHEREFORE**, the Plaintiff GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC., following presentation of this matter, respectfully pray that this Honorable Court enter judgment on debts against NEIGHBORHOOD ASSOCIATION, INC., to include costs, attorney's fees, and interest; as well as such



Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.  
Civil No. ST-19-CV-\_\_\_\_\_  
COMPLAINT

other and further relief as this Court deems proper and just.

Respectfully submitted,



DATED: November 15, 2019

---

**W. MARK WILCZYNSKI, ESQUIRE**  
Law Office of W. Mark Wilczynski, P.C.  
*Counsel for Plaintiff:*  
**GREAT BAY CONDOMINIUM OWNERS  
ASSOCIATION, INC.**  
Palm Passage, Ste. C20-22 – PO Box 1150  
St. Thomas, Virgin Islands 00804-1150  
Tel: (340) 774-4547  
Fax: (340) 774-4759  
[mwilczynski@usvilaw.com](mailto:mwilczynski@usvilaw.com)  
V.I. Bar No. 515

# **EXHIBIT “A”**



**THE RITZ-CARLTON  
CLUB**

ST. THOMAS

**Great Bay Condominium Owners  
Association, Inc.**

6910 Great Bay  
St. Thomas, VI 00802

**INVOICE**

**Member**

Name	The Neighborhood Association, Inc.			Invoice #	PR2018MF
Address	6910 Great Bay			Invoice Date	10/4/2019
City	St. Thomas	State	VI	ZIP	00802
Phone	610-796-8855 Attn: President			Due Date	<b>PAST DUE</b>

Description	TOTAL
<b>Maintenance Fee for Commercial Unit (CU-1)</b>	
Balance from 2017	\$ 159,085.00
Insurance Credit	\$ (24,304.65)
15% Late Fee	\$ 20,217.05
9% Finance charge through 10/31/2019	\$ 33,333.21
<b>Subtotal Balance due for 2017</b>	<b>\$ 188,330.61</b>
Balance from 2018	\$ 194,867.00
Insurance Credit	\$ (121,280.35)
15% Late Fee	\$ 11,038.00
9% Finance charge through 9/30/2019	\$ 11,576.29
<b>Subtotal Balance due for 2018</b>	<b>\$ 96,200.94</b>
<u>Transfer instructions:</u> FirstBank Great Bay Condominium Owners Association, Inc. Operating Account Account # 7171037093 Ref: CU-1 Operating & Reserve Maintenance Fees	
For questions regarding this maintenance fee invoice, please contact Marsha Leighton-Herrmann at 407-256-1808 or Marsha.Leighton-Herrmann@ritzcarlton.com	
<b>Total Balance Due for 2017 and 2018</b>	<b>\$ 284,531.55</b>

# **EXHIBIT “B”**



**THE RITZ - CARLTON  
CLUB**  
ST. THOMAS

**Great Bay Condominium Owners  
Association, Inc.**

6910 Great Bay  
St. Thomas, VI 00802

**INVOICE**

**Member**

Name	Owner of Commercial Unit (CU-1)	Invoice #	YR2020MF
Address	6910 Great Bay	Invoice Date	10/4/2019
City	St. Thomas	State	VI
	ZIP	00802	Due Date
Phone	610-796-8855 Attn: President of NA and GBCOA		

Description	TOTAL
Operating Expenses (1/1/2020-12/31/2020)	\$ 179,701.47
Reserve for Replacement (1/1/2020-12/31/2020)	\$ 13,070.56
<b>2020 Maintenance Fee Assessment</b>	<b>\$ 192,772.03</b>
Balance from 2019	\$ 169,524.00
15% Late Fee	\$ 25,428.60
9% Finance charge through 9/30/2019	\$ 11,411.52
<b>Subtotal Balance due for 2019</b>	<b>\$ 206,364.12</b>
 <u>Transfer instructions:</u> FirstBank Great Bay Condominium Owners Association, Inc. Operating Account Account # 7171037093 Ref: CU-1 Operating & Reserve Maintenance Fees	
For questions regarding this maintenance fee invoice, please contact Marsha Leighton-Hermann at 407-256-1808 or Marsha.Leighton-Hermann@ritzcarlton.com	
<b>Total Balance Due for 2019 and 2020</b>	<b>\$ 399,136.15</b>

See attached copy of the 2020 Operating Budget for Great Bay Condominium Owners Association, Inc.

# **EXHIBIT “C”**

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. CROIX**

THE NEIGHBORHOOD ASSOCIATION, INC., )  
GREAT BAY CONDOMINIUM OWNERS )  
ASSOCIATION, INC., )

CIVIL NO. ST-12-CV-

Plaintiff, )

v. )

MARRIOTT INTERNATIONAL, INC., )  
RITZ-CARLTON DEVELOPMENT CO., INC., )  
RC HOTELS (VIRGIN ISLANDS), INC., )  
MILLER, LEGG & ASSOCIATES, INC., f/k/a )  
Ivey, Harris & Walls, Inc., HARRIS CIVIL )  
ENGINEERS, LLC, successor to Ivey, Harris & )  
Walls, Inc.; IVEY PLANNING GROUP, LLC, )  
successor to Ivey, Harris & Walls, Inc.; )  
NICHOLS, BROACH, WURST, WOLFE & )  
ASSOCIATES, INC f/k/a Nichols Broach )  
Sandoval & Associates, Inc., BLISS & NITRAY, )  
INC.; STEVEN FELLER P.E. LLC.; )  
TRANSDESIGN GROUP LLLP, d/b/a RICCA )  
NEWMARK DESIGN, successor to Thomas )  
Ricca Associates; BARING INDUSTRIES, INC.; )  
RTKL ASSOCIATES, INC., successor to Howard )  
Snoweiss Design Group, )

ACTION FOR NEGLIGENCE;  
NEGLIGENT DESIGN;; BREACH  
OF IMPLIED WARRANTY OF  
PROFESSIONAL SERVICES;  
BREACH OF IMPLIED WARRANTY  
OF HABITABILITY; NEGLIGENT  
MISREPRESENTATION; BREACH  
OF NON-DELEGABLE DUTY OF  
CARE

Defendants. )

**COMPLAINT**

COME NOW Plaintiffs THE NEIGHBORHOOD ASSOCIATION, INC. and GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC., and complain against Defendants, and each of them, as follows:

**PARTIES**

1. Plaintiff THE NEIGHBORHOOD ASSOCIATION, INC. (hereinafter "NA") is a not

*W*

for profit corporation organized and existing under the laws of the Virgin Islands. NA is the owner of a condominium unit identified as Commercial Unit 1 ("CU-1") in Building G at the Ritz-Carlton Club, St. Thomas, Virgin Islands. CU-1 is also known as the "Fifth Floor Lounge."

2. Plaintiff GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC. (hereinafter "GBCOA") is a not for profit condominium association organized and existing pursuant to the Virgin Islands Condominium Act, and with the capacity to sue and be sued in its own name. GBCOA is the duly organized association of unit owners for the Ritz-Carlton Club in St. Thomas pursuant to the Declaration and the Association's By-Laws.

3. Defendant MARRIOTT INTERNATIONAL, INC., (hereinafter "Marriott") is a corporation organized and existing under the laws of the State of Delaware. Marriott regularly conducts business in the Territory of the Virgin Islands.

4. Defendant RITZ-CARLTON DEVELOPMENT COMPANY, INC. (hereinafter "RCDC") is a corporation organized and existing under the laws of the State of Delaware. RCDC regularly conducts business in the Territory of the Virgin Islands. Plaintiffs are informed and believe and based thereon allege that RCDC was primarily responsible for the design and construction of Building G, specifically including CU-1 at the Ritz-Carlton Club, St. Thomas.

5. Defendant RC HOTELS (VIRGIN ISLANDS), INC. (hereinafter "RC Hotels") is a corporation organized and existing under the laws of the United States Virgin Islands. RC Hotels was the Developer of GBCOA and was the Grantor of CU-1 to NA.

6. Defendant MILLER, LEGG & ASSOCIATES, INC., f/k/a Ivey, Harris & Walls, Inc. (hereinafter "Miller, Legg") is a corporation organized and existing under the laws of the State of Florida and is the surviving entity from a merger between Miller, Legg and Ivey, Harris & Walls in



2004 and has assumed all the rights and liabilities of said entity. Plaintiffs are informed and believes and based thereon alleges that Miller, Legg was the lead - prime design firm responsible for the design and specifications for Building G at the Ritz-Carlton Club, St. Thomas, specifically including CU-1.

7. Defendant HARRIS CIVIL ENGINEERS, LLC (“Harris Civil Engineers”) is a limited liability company organized and existing under the laws of the State of Florida. Plaintiffs are informed and believe and based thereon allege that Harris Civil Engineers has assumed some or all of the liabilities of Ivey, Harris & Walls with respect to design and specifications for Building G at the Ritz-Carlton Club, St. Thomas, specifically including CU-1.

8. Defendant IVEY PLANNING GROUP, LLC, (“Ivey Planning Group”) is a limited liability company organized and existing under the laws of the State of Florida. Plaintiffs are informed and believe and based thereon allege that Ivey Planning Group has assumed some or all of the liabilities of Ivey, Harris & Walls with respect to the design and specifications for Building G at the Ritz-Carlton Club, St. Thomas, specifically including CU-1.

9. Defendant NICHOLS, BROACH, WURST, WOLFE & ASSOCIATES, INC f/k/a Nichols Broach Sandoval & Associates, Inc. (hereinafter “Nichols Broach”) is a corporation organized and existing under the laws of the State of Florida. Plaintiffs are informed and believes and based thereon alleges that Nichols Broach, as the architect of record, was also responsible for the design and specifications for Building G at the Ritz-Carlton Club, St. Thomas, specifically including CU-1.

10. Defendant BLISS & NITRAY, INC., (hereinafter “Bliss & Nitray”) is a corporation organized and existing under the laws of the State of Florida. Plaintiffs are informed and believe and

based thereon allege that Bliss & Nitray were responsible for the engineering design and drawings for Building G at the Ritz-Carlton Club, St. Thomas, specifically including CU-1.

11. Defendant STEVEN FELLER, P.E., LLC. (“Feller”) is a Limited Liability Company organized and existing under the laws of the State of Florida. Plaintiffs are informed and believe and based thereon allege that Feller was responsible for the design and construction of Building G at the Ritz-Carlton Club, St. Thomas, specifically including CU-1, and more specifically including the engineering design of the kitchen, restrooms, and HVAC system.

12. Defendant TRANSDESIGN GROUP LLLP d/b/a RICCA NEWMARK DESIGN is the successor to Thomas Ricca Associates (“Transdesign”), and is a limited liability partnership organized and existing under the laws of the State of Colorado. Plaintiffs are informed and believe and based thereon allege that Transdesign was responsible for the design of CU-1, specifically including the kitchen and lounge areas.

13. Defendant BARING INDUSTRIES, INC. (“Baring”) is a corporation organized and existing under the laws of the State of Florida. Plaintiffs are informed and believe and based thereon allege that Baring was the design builder, specifically including the plumbing, ventilation and electrical requirements for CU-1.

14. Defendant RTKL Associates, Inc. (“RTKL”) is a corporation organized and existing under the laws of the State of Maryland and is the successor to Howard Snoweiss Design Group. Plaintiffs are informed and believe and based thereon allege that RTKL was responsible for the interior design of CU-1.

**THE FIFTH FLOOR LOUNGE (CU-1)**

15. In the year 2000 a structure identified as Building G at the Ritz-Carlton hotel

development was designed and built. Each of the above referenced Defendants actively participated in the design and construction of said building.

16. Defendants Marriott, RCDC and RC Hotels, jointly and severally acted as the developer of the project

16. The design for Building G included a lounge on the fifth floor, variously identified as the "Fifth Floor Lounge," the "Commercial Unit" or "CU-1". CU-1 consisted of a total gross floor area of 4,586 square feet. At the time Building G was designed and constructed the intended use was as a lounge for guests of the Ritz-Carlton hotel staying in Buildings G and H of the hotel development.

17. Building G should have been designed following the 1995 version of the International Building Code ("IBC") and the Fifth Floor Lounge should have been designed and engineered according to the Code-defined use group classification A-2 guidelines, suitable for its intended use. The Fifth Floor Lounge (CU-1), was designed for food and beverage service, and according to the IBC and the Marriott - Ritz brand standards, should have been designed as an A-2 "intended use" assembly area. The year 2000 design documents for G Building show the fifth floor designated as a "lounge" The plans included a "pantry kitchen" and one unisex ADA-accessible restroom with a sink and water closet.

18. CU-1 was not designed or constructed to the requirements of the IBC and Marriott - Ritz brand standards, and was defective in the following respects:

- a. The floor of CU-1 was required to be designed and constructed to carry a 100 pound structural live load, but was only designed to a forty pound live load. This was confirmed by William Caycedo, a Professional Engineer licensed to practice in the

Virgin Islands and a principal of Defendant Bliss & Nitray in an email dated August 23, 2010, to Mr. James Rappoport. A true and correct copy of that email thread is attached hereto as Exhibit A and is incorporated herein by reference.

- b. The IBC also requires that CU-1 have an HVAC system engineered to provide 20 cubic feet per minute of fresh air per occupant, with the number of occupants computed by the code-required algorithm of 15 square feet per occupant. Because CU-1 measures 4,586 square feet, this algorithm requires design and engineering for  $94,586/15 = 305$  occupants, thereby requiring at least 6,100 cubic feet per minute of acclimatized fresh air. This would require an air conditioning system of approximately 40 tons. However, the system actually designed, engineered and installed for CU-1 only provides approximately 1,400 cubic feet per minute of fresh air and only has a capacity of approximately 20 tons.
- c. Although designated as a “pantry” on the design drawings, the food preparation area of CU-1 was actually specified and built as a commercial kitchen. There are additional requirements under the codes for such a kitchen installation that were not included in either the design and engineering or the actual construction of CU-1.
- d. The design, engineering and construction of the electrical service for CU-1 is not sufficient to provide the power required to meet the code requirements for the intended commercial use of the facility.
- e. The toilet facilities of CU-1 do not meet code requirements for the intended use of the facility.

Plaintiffs first discovered the existence of said defects on or about September 2, 2010, when

it received a preliminary report from a design expert in connection with planned refurbishment of CU-1.

**TRANSFER OF OWNERSHIP**

19. Following completion of construction, title to G Building was vested in Defendant RC Hotels and the hotel guest rooms and Fifth Floor Lounge in G Building were used as part of the Ritz-Carlton hotel operation on St. Thomas.

20. In 2005 Defendants Marriott, RCDC, and RC Hotels made the decision to convert G Building to interval ownership in the Ritz-Carlton Destination Club program. Building G was conveyed to Plaintiff GBCOA by the Fifth Amendment to the Declaration of Condominium dated June 6, 2006. The Fifth Amendment conveyed to GBCOA certain land “together with Building G and related improvements thereon erected, owned by the Declarant [RC Hotels (Virgin Islands)] in fee simple absolute . . . .” Building G is described as consisting of twelve residential units with a maximum occupancy of 6 persons each, and one Commercial Unit, the subject CU-1 Fifth Floor Lounge.

21. A Condominium Deed conveying CU-1 to NA was executed on December 20, 2008, and was recorded with the Recorder of Deeds for St. Thomas and St. John on December 30, 2008.

22. In a Disclosure Statement regarding a public offering of timeshare interests, Defendants Marriott, RCDC, and RC Hotels, directly and through agents and related entities stated that “[T]he Commercial Unit CU-1 (the “Lounge”) will initially be owned by the Neighborhood Association and utilized for the purpose of providing food and beverage services to the occupants of Buildings G and H.”

**FIRST CAUSE OF ACTION  
(Negligence against Marriott, RCDC and RC Hotels)**

23. Plaintiffs repeat and replead the allegations contained in Paragraphs 1 through 22, inclusive, of this Complaint and repleads them as though set out in full at this place.

24. Plaintiffs are informed and believe and based thereon alleges that Marriott, RCDC and RC Hotels are sophisticated professionals in the hotel and resort industries and have significant experience in the design, engineering and construction of hotel and resort buildings. Plaintiffs are further informed and believe and based thereon allege that said Defendants selected the intended uses for G Building to the remaining Defendants specified the intended uses for G Building to the remaining Defendants and reviewed the plans, drawings and specifications prepared by said remaining Defendants.

25. Defendants Marriott, RCDC, and RC Hotels, in breach of the standard of care applicable to sophisticated professionals in the hotel and resort industries, negligently and carelessly specified the intended use of CU-1 and reviewed the plans, drawings and specifications prepared by the remaining Defendants without determining whether said plans, drawings and specifications met the requirements of the codes and the Marriott-Ritz brand standards.

26. As a proximate result of the negligence of Marriott, RCDC and RC Hotels, and each of them, the structure of the Fifth Floor Lounge and the design of CU-1 and its associated infrastructure fail to comply with the requirements of the codes and the Marriott-Ritz brand standards as set out more particularly in Paragraph 18 above.

27. As a result of said defects and the negligence of these Defendants, the Fifth Floor of G Building and CU-1 are not fit for their intended use and actually present health and safety of life

issues.

28. Plaintiffs, and each of them, have suffered, and continue to suffer damages in a sum according to proof including, without limitation, costs of re-design and re-engineering, repair and remediation, loss of use, and impairment of value.

**SECOND CAUSE OF ACTION  
(Breach of Implied Warranty against Marriott,  
RCDC and RC Hotels)**

29. Plaintiffs repeat and replead the allegations contained in Paragraphs 1 through 28, inclusive, of this Complaint and replead them as though set out in full at this place.

30. Defendants Marriott, RCDC, and RC Hotels, and each of them, had superior knowledge of the design and construction of G Building and Plaintiffs, and each of them, as well as individual members of each entity, relied on the representations and judgment of said Defendants.

30. As a result of said representations and judgment, Defendants Marriott, RCDC and RC Hotels, and each of them, impliedly warranted that the Fifth Floor of G Building and CU-1 were constructed in a reasonably professional manner and were fit for habitation.

31. The Fifth Floor of G Building and CU-1 contained latent defects as set out more particularly above and Defendants Marriott, RCDC, and RC Hotels, and each of them, have breached the implied warranty by delivering them to Plaintiffs in defective condition.

32. As a result of the breach alleged herein Plaintiffs, and each of them, have suffered , and continue to suffer damages in a sum according to proof including, without limitation, costs of repair and remediation, loss of use, and impairment of value.

**THIRD CAUSE OF ACTION**  
**(Strict Liability in Tort against Marriott,**  
**RCDC and RC Hotels)**

33. Plaintiffs repeat and replead the allegations contained in Paragraphs 1 through 32, inclusive, of this Complaint and replead them as though set out in full at this place.

34. Defendants Marriott, RCDC, and RC Hotels, and each of them, designed, constructed, sold, and transferred the Fifth Floor of G Building and CU-1 knowing that they would not be inspected for defects by Plaintiffs and their members purchasing timeshare interests.

35. The Fifth Floor of G Building and CU-1 were defective and were, and continue to be, unfit for their intended and represented use.

36. As a result of said defects, Marriott, RCDC, and RC Hotels are, jointly and severally liable to Plaintiffs, and each of them, for all damages proximately caused by the aforementioned defects.

**FOURTH CAUSE OF ACTION**  
**(Negligent Misrepresentation against Marriott,**  
**RCDC, and RC Hotels)**

37. Plaintiffs repeat and replead the allegations contained in Paragraphs 1 through 36, inclusive, of this Complaint and replead them as though set out in full at this place.

38. Defendants Marriott, RCDC, and RC Hotels, and each of them took actions and made statements leading Plaintiffs, and each of them, to reasonably believe that the Fifth Floor of G Building and CU-1 were reasonably fit for their intended uses.

39. Defendants Marriott, RCDC, and RC Hotels, and each of them, took such actions and made such statements without undertaking a reasonable investigation of the accuracy thereof. Has



said Defendants undertaken a reasonable investigation or acted in an otherwise reasonable manner they would have discovered the existence of the defects specified in detail in Paragraph 18 of this Complaint.

40. As a result of said misrepresentations, Marriott, RCDC, and RC Hotels are, jointly and severally liable to Plaintiffs, and each of them, for all damages proximately caused by the aforementioned misrepresentations.

**FIFTH CAUSE OF ACTION  
(Breach of Non-Delegable Duty by Marriott,  
RCDC and RC Hotels)**

41. Plaintiffs repeat and replead the allegations contained in Paragraphs 1 through 40, inclusive, of this Complaint and replead them as though set forth in full at this place.

42. At the time of recording the Fifth Amendment to the Declaration of Condominium and at the time of conveyance of CU-1 to Plaintiff NA, the Fifth Floor of G Building and CU-1 did not comply with the requirements of the codes and Marriot brand standards and were, therefore, defective. Said defects involved health and safety issues and created a substantial risk of injury or death to persons on said premises.

43. Defendants Marriott, RCDC, RC Hotels, and each of them, had a non-delegable duty to convey the Fifth Floor of G Building and CU-1 to Plaintiffs without statutory code violations affecting health and safety.

44. Said Defendants are liable to Plaintiffs for all damages proximately resulting from the failure to convey the Fifth Floor of G Building and CU-1 without health and safety code violations.

**SIXTH CAUSE OF ACTION**  
**(Negligent Design against Miller, Legg, Harris**  
**Civil Engineers, Ivey Planning Group, and**  
**Nichols Broach)**

45. Plaintiffs repeat and replead the allegations contained in Paragraphs 1 through 44, inclusive, of this Complaint and replead them as though set out in full at this place.

46. Plaintiffs are informed and believe and based thereon allege that Miller, Legg, Harris Civil Engineers, and Ivey Planning group, by and through their predecessor in interest, Ivy, Harris & Walls, Inc. and/or Defendant Nichols Broach either had or shared primary design responsibility with the other Defendants. Plaintiffs are further informed and believe and based thereon allege that each of said Defendants participated in some professionally prime-principal manner as licensed design professionals in the facility programming, code review, design, engineering, design review and coordination of their work and the work of third-party design professionals, who together contributed to the design and engineering of the Fifth Floor of G Building and CU-1, and participated in or had primary responsibility for design review and coordination, specifications and code compliance of the overall project, specifically including work performed by other design professionals, consultants, contractors and subcontractors involved in the project.

47. Said Defendants, and each of them, substantially deviated from the standard of care applicable to experienced hotel and resort engineers and architects approved by Marriott to work on Marriott-branded hotels and resorts. Said Defendants so negligently and carelessly researched, designed, reviewed, contracted and subcontracted, supervised the work of themselves and others such that the Fifth Floor of G Building and CU-1 did not comply with the IBC and other code requirements applicable for the intended use of the Fifth Floor and CU-1.

48. As a result of the negligence of said Defendants as set forth herein, they are jointly and severally liable to Plaintiffs, and each of them, for all damages proximately caused by the aforementioned misrepresentations, professional errors and omissions and deviation from the standard of care prevailing for this type of project.

**SEVENTH CAUSE OF ACTION  
(Negligent Design against Bliss & Nitray)**

49. Plaintiffs repeat and replead the allegations contained in Paragraphs 1 through 48, inclusive, of this Complaint and repleads them as though set out in full at this place.

50. Defendant Bliss & Nitray was the engineering firm primarily for performing the structural engineering work on the project, specifically including design of the structure and infrastructure of G Building and CU-1 to comply with code requirements and Marriott brand standard design and construction guidelines.

51. Defendant Bliss & Nitray, substantially deviated from the standard of care applicable to experienced professional engineers approved to work on Marriott-branded hotels and resorts. Said Defendant so negligently and carelessly researched, designed, prepared and reviewed the structural drawings for the project such that the Fifth Floor of G Building and CU-1 did not comply with the IBC and other code requirements applicable for the intended use of the Fifth Floor and CU-1.

52. Specifically, and without limiting the generality of the foregoing, Defendant Bliss & Nitray only designed the floor structure of the Fifth Floor of G Building to withstand a 40 pound live load although said Defendant knew, or in the exercise of reasonable care should have known that a 100 pound live load design was required for the intended use of the Fifth Floor and CU-1. William Caycedo, a principal in Defendant Bliss & Nitray, has previously acknowledged designing the floor

to only a 40 pound live load in email correspondence attached hereto as Exhibit A and incorporated herein by reference.

53. Plaintiffs are informed and believe and based thereon allege that Defendant Bliss & Nitray has been negligent in the performance of its work with respect to G Building and CU-1 in other respects including, without limitation, preparing drawings that clearly illustrated a pantry, knowing that the design specifications actually called for a commercial kitchen, preparing drawings for restroom facilities that did not comply with code requirements for the intended use of the Fifth Floor, and coordinating their structural engineering drawings with the drawings of third party engineers illustrating the installation of an HVAC system and emergency exits that did not comply with code requirements. Plaintiffs reserve the right to amend this Complaint to set forth other instances of negligent errors and omissions and deviation from the standard of care and careless conduct on the part of Defendant Bliss & Nitray as they are discovered.

54. As a result of the negligence of said Defendant Bliss & Nitray as set forth herein, Plaintiffs have suffered damages in an amount subject to proof.

**EIGHTH CAUSE OF ACTION**  
**(Negligent Design against Feller, Transdesign**  
**Group, Baring and RTKL)**

55. Plaintiffs repeat and replead the allegations contained in Paragraphs 1 through 54, inclusive, of this Complaint and replead them as though set out in full in this place.

56. Plaintiffs are informed and believe and based thereon allege that Defendants Feller, Transdesign Group, as successor to Thomas Ricca Associates, Baring, and RTKL, as successor to Howard Snoweiss Design Group, were each responsible, in whole or in part, for the design,

specification, review, construction, installation and inspection of other portions of the interior fit-out and infrastructure off G Building and CU-1 including, without limitation, the kitchen, restrooms, lounge area, plumbing, ventilation, electrical and HVAC systems thereof.

57. Plaintiffs are informed and believe and based thereon allege that each of said defendants so negligently and carelessly performed their work such that the work contained errors and omissions that substantially deviated from the standard of care applicable to experienced professionals approved to work on Marriott-branded hotels and resorts. Said Defendant so negligently and carelessly researched, designed, prepared, coordinated and reviewed the structural drawings for the project such that the engineering and architectural drawings for the project that the Fifth Floor of G Building and CU-1 did not comply with the code requirements applicable for the intended use of the Fifth Floor and CU-1.


58. As a result of the negligence of said Defendants, and each of them, as set forth herein, Plaintiffs have suffered damages in an amount subject to proof.

**WHEREFORE**, Plaintiffs pray for judgment against Defendants, and each of them, jointly and severally, as follows:

1. For an award of general, special and consequential damages in a sum according to proof;
2. For costs of suit incurred herein, including reasonable attorneys fees; and,
3. For such other and further relief as the Court deems proper.

DATED: August 1, 2012

Respectfully Submitted,

  
James M. Derr, Esq.  
V.I. Bar No. 504  
P.O. Box 664  
St. Thomas, V.I. 00804  
(340) 244-2566  
jimderlaw@gmail.com

**Jim Derr**

---

**To:** James Rappoport  
**Subject:** RE:

---

**From:** William Caycedo [<mailto:w-caycedo@bniengineers.com>]  
**Sent:** Monday, August 23, 2010 1:07 PM  
**To:** James Rappoport  
**Subject:** RE:

The superimposed loads used for design were:

Live load 40 PSF  
Dead Load 20 PSF

Regards,



**William Caycedo, P.E.**  
Principal/Partner  
800 Douglas Road, Suite 300  
Coral Gables, Florida 33134  
T 305-442-7086 F 305-442-7092  
[w-caycedo@bniengineers.com](mailto:w-caycedo@bniengineers.com)  
[www.BNIengineers.com](http://www.BNIengineers.com)

---

**From:** James Rappoport [<mailto:JamesR@DaroffDesign.com>]  
**Sent:** Monday, August 23, 2010 12:03 PM  
**To:** William Caycedo  
**Subject:** RE:

Willim

thanks  
the client told us its building 5  
they also told us its now called the Gardenia Building  
We are checking again to verify which building we are talking about, using your key plan as reference  
What was the live load you designed for in the plan you sent to me this morning?

JIM

**James Rappoport, AIA, NCARB**

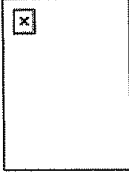


2121 Market Street  
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**From:** William Caycedo [<mailto:w-caycedo@bniengineers.com>]  
**Sent:** Monday, August 23, 2010 11:25 AM  
**To:** James Rappoport  
**Subject:** FW:

Attached is plan for 5<sup>th</sup> floor. Slab had same design as lower floors




**William Caycedo, P.E.**  
Principal/Partner  
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[www.BNlengineers.com](http://www.BNlengineers.com)

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# **EXHIBIT “D”**



**RATIFICATION AGREEMENT**

This Ratification Agreement ("Agreement") entered into this 30<sup>th</sup> day of May, 2014,  by and between GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC. ("GBCOA") and THE NEIGHBORHOOD ASSOCIATION, INC. ("NA")

Witnesseth:

WHEREAS, GBCOA is the condominium association for owners of Residence Interests at The Ritz-Carlton Destination Club, St. Thomas, Virgin Islands, and,

WHEREAS, NA is the record owner of a commercial condominium unit known as CU-1, which is located on the fifth floor of Gardenia Building at The Ritz-Carlton Destination Club, St. Thomas, Virgin Islands; and,

WHEREAS, NA is a member of GBCOA by virtue of its ownership of CU-1 and has the right to the exclusive use of CU-1 and the limited common areas appurtenant thereto, and to the use of the common areas of GBCOA; and,

WHEREAS, NA has recently completed a renovation of the entire fifth floor of Gardenia Building, specifically including renovation of a restaurant facility located in CU-1; and,

WHEREAS, certain of the renovations have affected the structure of the fifth floor of Gardenia Building, specifically including certain of the common areas; and,

WHEREAS, the parties wish to confirm and ratify certain of the renovation work to the extent that it affects the common areas on the fifth floor of Gardenia Building;

NOW THEREFORE, the parties covenant and agree as follows:

1. GBCOA acknowledges that NA has undertaken the following work and



renovations, and GBCOA herewith ratifies and approves said work and renovations to the extent they affect the common areas of GBCOA:

- a. Installation of Nana Wall windows on the patio balcony of the fifth floor of Gardenia Building;
- b. Painting of the interior walls of the patio balcony and ceiling of the fifth floor of Gardenia Building;
- c. Closed the patio door leading from CU-1 to the fifth floor balcony;
- d. Installed a stand-alone air conditioning unit for the patio balcony and placement on the roof of Gardenia Building;
- e. Painted and installed certain fixtures in the hallways and elevator lobby;
- f. Modified plumbing in the walls and floor of CU-1 to install four water closets, which are now integrated into the existing building plumbing;
- g. Installed a fully functioning bar on the patio balcony of the fifth floor of Gardenia Building, including modification of the plumbing and sewage systems to provide service to the bar;
- h. Relocated the air handler for CU-1 to the newly expanded kitchen;
- i. Redesigned the interior space of CU-1, including attachment of fixtures to the walls and structure of CU-1;
- j. Installed separate electric meter for CU-1, and upgraded electric service to the fifth floor of Gardenia Building;
- k. Installed a 500 gallon propane tank on certain common areas outside the front of

SW

Gardenia Building, and installed a gas line on the outside of Gardenia Building to provide service to the fifth floor;

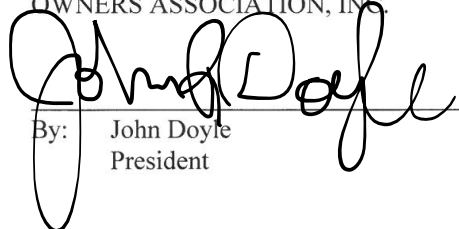
1. Placed a Dumpster on certain common areas for the sole use of the Grand Palazzo Club located in CU-1;
- m. Placed a separate container for cooking grease on certain common areas of GBCOA;
2. GBCOA further consents to and ratifies the placement of a sign on the outside of Gardenia Building, and installation of signs in the elevator of Gardenia Building indicating the location of the Grand Palazzo Club.
3. GBCOA further consents to and ratifies the placement of additional signs on common areas of GBCOA to indicate the location of the Grand Palazzo Club.
4. GBCOA further consents to the use of the GBCOA parking lot for use by employees of the Grand Palazzo Club, on a non-exclusive basis.
5. In consideration of the foregoing, NA warrants that all work referenced above was done in accordance with plans from properly qualified and licensed design professionals, and that all work has been performed by fully qualified and licensed contractors and subcontractors, and that all work has been done in compliance with applicable building codes and Marriott and Ritz-Carlton brand standards.
6. NA shall, at its sole cost and expense, maintain, repair, and replace all work and equipment, and to keep all improvements and equipment in serviceable condition, and in full compliance with all applicable codes, regulations, laws, and Marriott and Ritz-Carlton brand

standards.

7. In the event that any person or entity, either directly or indirectly, acquires more than 33% of the voting interest in NA, or in the event that the majority of members of the NA Board of Directors is not made up of members who independently own their Residence Interests, then GBCOA may, in its sole and absolute discretion, withdraw this ratification and this agreement shall become null and void and of no legal effect. In the event that GBCOA elects to terminate this agreement, then NA agrees, at its sole cost and expense, to restore the premises to its condition before the work referenced herein was undertaken, or pay to GBCOA an amount equal to the cost of said restoration. In that event NA further covenants and agrees that it will undertake no work, maintenance, repairs, or alterations to any of the common areas or limited common areas of Gardenia Building, specifically including the common areas and limited common areas on the fifth floor of Gardenia Building, without the express written consent of GBCOA.

8. This agreement may be executed in counterparts and faxed or scanned signatures shall be as binding as original signatures.

GREAT BAY CONDOMINIUM  
OWNERS ASSOCIATION, INC.

  
By: John Doyle  
President

THE NEIGHBORHOOD ASSOCIATION, INC.



Great Bay Condominium Owners Association/Neighborhood Association  
Ratification Agreement  
May 29, 2014  
Page 5



---

By: Salvatore Cutrona  
President



**A.000501**

# **EXHIBIT “E”**



Mr. Sal Cutrona  
President  
THE NEIGHBORHOOD ASSOCIATION, INC.  
6910 GREAT BAY  
ST. THOMAS, VI 00802

Via E-mail [naboardstthomas@gmail.com](mailto:naboardstthomas@gmail.com)

August 19, 2019

RE: Ratification Agreement

Gentlemen

On May 29<sup>th</sup>, 2014 Mr. Cutrona executed a "Ratification Agreement" on behalf of The Neighborhood Association, Inc ("NA") with the Great Bay Condominium Owners Association ("GBCOA"). This Agreement ratified certain modifications made by NA in connection with the renovation and conversion of the Suites Lounge into The Grand Palazzo Club, allowed the placement of signage on the property as well as consented to The Grand Palazzo Clubs use of the GBCOA parking lot.

As part of the renovation and conversion certain structural changes were made to the structure of the Fifth Floor of the Gardenia Building. These include changes to the Common Area including but not limited to the installation of Nano Windows, the installation of a complete bar and changes to the lobby of the fifth floor.

In consideration NA agreed in the event that any person or entity, either directly or indirectly, acquires more than 33% of the voting interest in NA, or in the event that the majority of members of the NA Board of Directors is not made up of members who independently own their Residence Interests, then GBCOA may, in its **sole and absolute** discretion, withdraw this ratification and this agreement shall become null and void and of no legal effect. In the event that GBCOA elects to terminate this agreement, then NA agrees, at its sole cost and expense, to restore the premises to its condition before the work referenced herein was undertaken or pay to GBCOA an amount equal to the cost of said restoration.

The GBCOA has on multiple occasions discussed with current officers of NA their obligations under this agreement. During numerous calls and e-mails during the summer of 2017 NA officers were told that the GBCOA expected NA to perform its duties under the agreement.

**A.000503**



Since now more than 33% of the voting interest in NA is controlled by the MVW Trust the obligation to fund the escrow can be demanded. Consider this letter as official notification that NA's obligations to fund the escrow pursuant to this agreement are triggered. In that regard we demand that NA immediately fund the escrow to restore the premises to its condition before the work referenced in this agreement was undertaken. Since the original cost was over \$1.9 million, GBCOA believes the restoration cost to be in excess of \$800,000. If NA disagrees with this figure, they should submit the actual bids to restore the premises and escrow those amounts.

Thomas J. Doyle  
Treasurer  
Great Bay Condominium Association, Inc.

Attachment: Ratification Agreement

CC's

Mr. Marc Betesh  
Secretary  
Mr. Enzo Orsini  
Vice President & Treasurer  
Lee Cunningham  
Stacey Jackson-Rauso  
Jeff Comfort (Head of the MVW Trust)  
John Hearn



# **EXHIBIT 14**

**FILED**

December 22, 2020  
ST-2018-CV-00768  
TAMARA CHARLES  
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS**  
District of St. Thomas/St. John

---

**GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.,**  
**Plaintiff**      Case Number: **ST-2018-CV-00768**  
Action: **Declaratory Judgment**

v.

**THE NEIGHBORHOOD ASSOCIATION, INC.,**  
**Defendant.**

**NOTICE of ENTRY  
of  
ORDER**

To W. Mark Wilczynski, Esquire  
:

Maria T. Hodge, Esquire

_____	_____
_____	_____
_____	_____
_____	_____
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_____	_____
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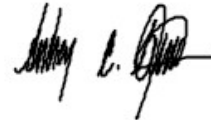
Please take notice that on **December 22, 2020**  
a(n) **ORDER**  
dated **December 22, 2020** was entered  
by the Clerk in the above-titled matter.

Dated **December 22, 2020**  
:

**Tamara Charles**

\_\_\_\_\_  
**Clerk of the Court**

By:



\_\_\_\_\_  
**Audrey C. Brin**  
**Court Clerk II**

**FILED**

December 23, 2020  
ST-2018-CV-00768  
TAMARA CHARLES  
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS**  
District of St. Thomas/St. John

---

**GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.,**  
**Plaintiff**      Case Number: **ST-2018-CV-00768**  
Action: **Declaratory Judgment**

v.

**THE NEIGHBORHOOD ASSOCIATION, INC.,**  
**Defendant.**

**NOTICE of ENTRY  
of  
ORDER**

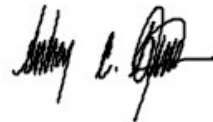
To **W. MARK WILCZYNSKI, ESQUIRE**      **MARIA T. HODGE, ESQUIRE**

:  
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Please take notice that on **December 23, 2020**  
a(n) **ORDER**  
dated **December 22, 2020** was entered  
by the Clerk in the above-titled matter.

Dated **December 23, 2020**  
:

**Tamara Charles**  
\_\_\_\_\_  
**Clerk of the Court**  
By:



\_\_\_\_\_  
**Audrey C. Brin**  
**Court Clerk II**

**FILED**

December 22, 2020  
ST-2018-CV-00768  
TAMARA CHARLES  
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

GREAT BAY CONDOMINIUM OWNERS	)	
ASSOCIATION, INC.,	)	
	)	CASE NO. ST-18-CV-768
Plaintiff,	)	
	)	
v.	)	ACTION FOR DECLARATORY
	)	JUDGMENT, TO CANCEL DEED
THE NEIGHBORHOOD ASSOCIATION, INC.,	)	AND TO QUIET TITLE
	)	
Defendant.	)	
_____		

**ORDER**

**THIS MATTER** is before the Court on Plaintiff Great Bay Condominium Owners Association, Inc.'s ("Great Bay") "Motion to Consolidate," filed on December 23, 2019. Defendant Neighborhood Association ("Neighborhood") filed an Objection on January 15, 2020, and Great Bay filed a Reply on January 29, 2020. For the reasons below, Great Bay's motion will be denied.

The Court is permitted to consolidate actions under Virgin Islands Rule of Civil Procedure 42 if they "involve a common question of law or fact." The Court has broad discretion when determining whether consolidation is appropriate and "should weigh the benefits of judicial economy against the potential for new delays, expense, confusion or prejudice." *Fahie v. Ferguson*, Nos. ST-16-CV-638, ST-16-CV-682, 2017 V.I. LEXIS 33, at \*3 (Super. Ct. Feb. 23, 2017). "A motion to consolidate may be denied if the common issue is not a principal one, if it will cause delay in one of the cases, or if it will lead to confusion or prejudice in the trial of a case." *Id.*

Great Bay moves to consolidate this action with ST-19-CV-650, an action for debt involving the same parties. The two cases share common facts, but the legal issues are distinct. This is an action to quiet title and cancel a deed, while ST-19-CV-650 is an action to recover a debt arising from a dispute over funds held in a trust account. While the parties and property underlying the

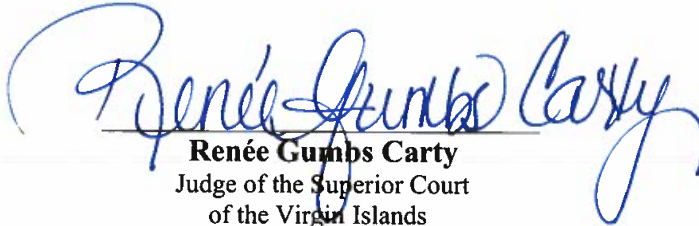
Great Bay Condominium Owners Ass'n, Inc. v. The Neighborhood Ass'n, Inc.  
Case No. ST-18-CV-768  
Order

disputes are the same, there is no risk of conflicting judgments and the legal issues do not need to be considered simultaneously or by the same judge. Consolidation would risk delay and confusion in this case, as the parties are already subject to a scheduling order. The premises considered and the Court being satisfied therein, it is hereby

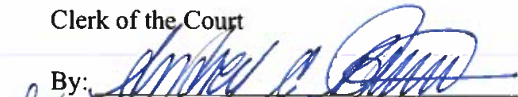

**ORDERED** that Plaintiff's motion is **DENIED**; and it is further

**ORDERED** that a copy of this Order shall be directed to W. Mark Wilczynski, Esquire and Maria Tankenson Hodge, Esquire.

Dated: December 22, 2020

  
**Renée Gumbs Carty**  
Judge of the Superior Court  
of the Virgin Islands

ATTEST:  
Tamara Charles  
Clerk of the Court

By:   
Lori Boynes-Tyson  
Chief Deputy Clerk 



*Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.*  
Case No. ST-18-CV-768  
Order

**SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
**HONORABLE RENEE GUMBS CARTY**  
Judge of the Superior Court of the Virgin Islands

**ATTEST:**

**Tamara Charles**  
Clerk of the Court

By: \_\_\_\_\_  
Court Clerk \_\_\_/\_\_\_/\_\_\_

# E-Filing Submission Confirmation

The following electronic filing(s) were successfully submitted. Please keep a copy of this confirmation for your records.

**Submitted Date** 11-15-2021 05:19 PM  
**E-File Confirmation #** 15441637011148256

**Filings Submitted:**

<b>Court</b>	<b>Case Number</b>	<b>Filing Type(s)</b>	<b>Documents</b>	<b>Fees</b>
Superior Court of the Virgin Islands	ST-2018-CV-00768	Motion - Motion	15	\$ 0.00
		Notice - Proposed Order	1	\$ 0.00
<u>Total</u>				<u>\$ 0.00</u>



IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

\*\*\*\*\*

GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.,	)	
PLAINTIFF,	)	CIVIL COMPLAINT
vs.	)	CASE NO. ST-2018-CV-00768
THE NEIGHBORHOOD ASSOCIATION, INC.,	)	ACTION FOR:
DEFENDANT.	)	DECLARATORY JUDGMENT

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T R A N S C R I P T

November 16, 2021

BEFORE: HONORABLE RENEE GUMBS CARTY, JUDGE PRESIDING

APPEARANCES: W. MARK WILCZYNSKI, ESQ. &  
DAVID WENTZEL, ESQ., *Pro Hac Vice*  
Law Office of W. Mark Wilczynski, P.C.  
Palm Passage, Ste. C-20-22  
St. Thomas, Virgin Islands 00802

(For the Plaintiff)

MARIA TANKENSON HODGE, ESQ.  
Hodge & Hodge  
1340 Taarneberg  
St. Thomas, Virgin Islands 00802

(For the Defendant)

COURT REPORTER: ARLENE A.P. STEPHENS-DONOVAN, RMR  
Official Court Reporter II

A.000513

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THE COURT: Okay.

THE CLERK: Great Bay  
Condominium Owners Association, Inc., versus  
The Neighborhood Association, Inc.

ATTORNEY WILCZYNSKI: Good morning, Your Honor. Mark Wilczynski on behalf of Great Bay with my co-counsel, David Wentzel appearing Pro Hac Vice.

THE COURT: Okay. Good morning.

ATTORNEY HODGE: Good morning, Your Honor. Maria Tankenson Hodge for the defendant, the Neighborhood Association, Inc.

THE COURT: Okay. Very well. Good morning. Okay. I just received these documents. Just give me one second here.

Have you received these, Attorney Hodge? It's the motion to dissolve or modify the TRO with a number of exhibits.

ATTORNEY TANKENSON HODGE: Yes, Your Honor. I saw that this morning. Under Rule 65(b) (4) we're entitled to two days notice for consideration of this motion, so I certainly have only had a chance to briefly scan it, certainly not to fully

1 review it, and I would ask the Court to  
2 simply put it over to your Friday calendar  
3 when you had already scheduled the hearing on  
4 our preliminary injunction.

5 THE COURT: Right. Okay. So  
6 I put this matter on for a status conference  
7 today to determine -- I guess, first of all,  
8 Attorney Wilczynski, I think I had you in  
9 mind in terms of were you able to reach out  
10 to your client, because I read in the moving  
11 papers that you were going to reach out to  
12 your client and you were going to get back in  
13 about 30 minutes or so. And I guess the  
14 assumption was since there was no response,  
15 that the defendant went head and filed the  
16 TRO.

17 ATTORNEY WILCZYNSKI: Yes.

18 THE COURT: But were you able  
19 to have any substantive discussions with your  
20 client to the point of revoking those  
21 invoices, or not issuing the invoices or  
22 demanding the monies by November 22nd?

23 ATTORNEY WILCZYNSKI: Thank  
24 you for the opportunity, Your Honor.  
25 Attorney Wentzel and I both together did have

1 an opportunity over this weekend to discuss  
2 that matter with our client, and if it's okay  
3 with you I prefer that he respond on that  
4 issue.

5 THE COURT: Very well.

6 ATTORNEY WENTZEL: Good  
7 morning, Your Honor.

8 THE COURT: Good morning.

9 ATTORNEY WENTZEL: Your Honor,  
10 what happened was, hours before the motion  
11 for TRO was filed, the developer of the  
12 Ritz-Carlton Club who wrote the declarations,  
13 wrote the declarations that created the  
14 Neighborhood Association and the commercial  
15 unit, C1, they paid the assessment without  
16 objection. They have about a 47 percent  
17 interest in the Neighborhood Association, the  
18 residents interest there. So combined with  
19 the NBC Trust, together they hold about  
20 49 percent.

21 And in the moving papers that we  
22 filed with Your Honor to dissolve, we lay out  
23 there that those two entities had admitted  
24 their liability to pay these assessments.  
25 And in fact, the developer, the

1 Ritz-Carlton -- of the Ritz-Carlton Club had  
2 paid the assessments prior to the filing of  
3 the moving papers on Friday. So that's all  
4 set forth in our motion to dissolve the TRO,  
5 especially since we don't want to have to go  
6 back to the developer that admits the  
7 liability and agrees with our interpretation  
8 of the declarations and say, you know, we  
9 have to rescind that.

10 THE COURT: But the --

11 ATTORNEY WENTZEL: They've all  
12 paid and they paid without objection.

13 THE COURT: Okay.

14 ATTORNEY WENTZEL: They paid  
15 prior to Your Honor's order being entered.

16 THE COURT: I'm sorry. Keep  
17 your voice up, Attorney Wentzel.

18 ATTORNEY WENTZEL: I  
19 apologize, Your Honor, I'll adjust the  
20 volume.

21 I said as I'd mentioned, the  
22 developer paid the assessments prior to Your  
23 Honor entering the TRO order. And that's a  
24 large part of our motion to dissolve it, or  
25 at least to modify it so that the direction

1 to rescind, which is in the nature of the  
2 preliminary injunction, if not more in the  
3 nature of a permanent injunction, that's the  
4 reason for our moving to dissolve it.

5 THE COURT: Okay.

6 Attorney Hodge, do you want to  
7 respond to that?

8 ATTORNEY TANKENSON HODGE: Your  
9 Honor, the first thing I'd like to say is,  
10 again, we are entitled to two-days notice  
11 under the rules for this motion. It  
12 shouldn't be argued this morning. We've had  
13 it for literally minutes.

14 THE COURT: Right.

15 ATTORNEY TANKENSON HODGE: So  
16 I would ask the Court not to expect us to  
17 address the merits in any substantial way.

18 I would say to the Court that the  
19 fact that a single wealthy institution may  
20 have chosen to pay this assessment doesn't  
21 mean that it is not, as the motion for TRO  
22 and preliminary injunction said, a source of  
23 irreparable harm to the majority owners of NA  
24 who are individual people who would be locked  
25 out of their residences by virtue of this

1 action. So the short answer I think to the  
2 Court's inquiry to Attorney Wilczynski was,  
3 when you reached -- were you able to reach  
4 out to your clients, were you able to find  
5 out if they would voluntarily rescind this to  
6 avoid the need for a TRO, and I think that  
7 the short answer is that they reached out and  
8 the answer was no, they wouldn't voluntarily  
9 rescind.

10 So we would be prepared to go  
11 forward on Friday with the evidence on the  
12 preliminary injunction. We would be prepared  
13 at that point to respond to this motion  
14 fully, and we would ask the Court to permit  
15 us to do that.

16 THE COURT: Okay. Very well.

17 ATTORNEY WILCZYNSKI: Your  
18 Honor, if I may. I don't necessarily want  
19 words put in my mouth. We did reach out to  
20 the client. We did not make the 30 minutes.  
21 I think I called Attorney Hodge about five  
22 minutes thereafter, and certainly the major  
23 problem, the major problem with the  
24 restraining order is the -- the request, is  
25 the order to rescind. Our bills had already

1 gone out, and it certainly wasn't possible  
2 for us to negotiate something. But at that  
3 point your order was entered and we received  
4 a number of communications over the weekend  
5 demanding that we do everything immediately.

6 Saturday afternoon, Sunday morning  
7 when the vendor that was involved in the  
8 creation of the invoices and sending them up  
9 to the individual members, whether they were  
10 large institutions or small, really could not  
11 be reached. So we are caught between a rock  
12 and a hard place on that, Your Honor.

13 ATTORNEY TANKENSON HODGE: So,  
14 just to clarify, Your Honor, I agreed with  
15 Attorney Wilczynski and Wentzel that we would  
16 not file the motion for TRO for 30 minutes at  
17 their request to give them an opportunity to  
18 talk to their client before doing so.

19 ATTORNEY WILCZYNSKI: Right.

20 ATTORNEY TANKENSON HODGE: I  
21 in fact did not file for 40 minutes. I've  
22 had no call back by that time and I filed.  
23 Then Attorney Wilczynski called me and said I  
24 am calling you because we said we would. I  
25 see you file, and the answer was as expected.



1 Meaning, they were not going to consent. So  
2 that's the short answer.

3 And the communications over the  
4 weekend had to do with the fact that once  
5 Your Honor entered the TRO, specifically  
6 directing Great Bay to rescind these invoices  
7 during this period of time when we were  
8 preparing for the hearing on preliminary  
9 injunction -- because the very existence of  
10 the invoices creates the lien and the threat  
11 on these residential interest -- that we  
12 wrote to Attorney Wilczynski and said, please  
13 notify -- please have your client notify the  
14 NA members immediately of this TRO that these  
15 invoices are rescinded while this is pending.  
16 And they declined to do that.

17 They said that they had a vendor who  
18 sent out the invoices; it took weeks to do  
19 that; the approach they took was, we are not  
20 going to notify the owners ourselves, we're  
21 going to go through this slow moving process  
22 of having the vendor send out, I guess, some  
23 new zero invoice.

24 Although as we communicated with the  
25 attorneys over the weekend, Great Bay had

1 made very clear it was able to send a message  
2 to NA owners who literally within hours of  
3 choosing to do so on this subject and they  
4 could have sent a memo to NA owners on  
5 Saturday saying the invoices are rescinded  
6 pending further notice, or something of that  
7 sort, and they simply refused to do that.  
8 What they've done and said is send us a copy  
9 of a corporate minute that they wrote to  
10 themselves saying they're going to inform  
11 this third-party vendor about this  
12 announcement.

13 So in effect, Great Bay has chosen  
14 to defy the TRO. They are not notifying NA  
15 owners of this Court's order and they are  
16 leaving the compliance with the Court order  
17 completely unperformed. So that is a source  
18 of concern to us and we propose to address it  
19 with Your Honor further on Friday.

20 THE COURT: Okay.

21 ATTORNEY WILCZYNSKI: Your  
22 Honor, for somebody who doesn't want to argue  
23 the motion, Attorney Hodge seems more than  
24 capable of arguing those parts that she  
25 considers to be in her favor.

1                   ATTORNEY TANKENSON HODGE: So  
2 that's my motion, not your motion.

3                   THE COURT: Okay. So,  
4 Attorney Wilczynski, the --

5                   ATTORNEY WILCZYNSKI: Yes,  
6 Your Honor.

7                   THE COURT: -- so I'm not going  
8 to dissolve it. I'm not going to dissolve  
9 the TRO. From my understanding, it was  
10 requested because the Court essentially has  
11 not ruled on the underlined issues as yet.  
12 And it place these, what, maybe 200 -- is it  
13 288 members of NA in an awkward position and  
14 forcing them to be locked out of their  
15 personal residences, their personal units; is  
16 that correct?

17                   ATTORNEY WILCZYNSKI: No.

18                   ATTORNEY WENTZEL: Your Honor,  
19 if I may respond.

20                   THE COURT: Yes.

21                   ATTORNEY WENTZEL: Your Honor,  
22 the invoices aren't due until November 22nd.

23                   THE COURT: That's right  
24 around the corner.

25                   ATTORNEY WENTZEL: And, Your

1 Honor, did I hear Your Honor say you were  
2 going to deny our motion without having read  
3 it?

4 THE COURT: No, no, no. My  
5 TRO standpoint --

6 ATTORNEY WENTZEL: Okay. Our  
7 motion is to dissolve the TRO.

8 THE COURT: Okay. I haven't  
9 read it.

10 ATTORNEY WENTZEL: Okay.

11 THE COURT: I just received it  
12 not even five minutes.

13 ATTORNEY WENTZEL: We  
14 understand.

15 THE COURT: Yes.

16 ATTORNEY WENTZEL: The only  
17 thing I want to respond to Your Honor is your  
18 comment that you have not decided the  
19 underlined issues. One of the points we make  
20 in our motion is that the underline issues  
21 are not before Your Honor. They are not  
22 raised in any affirmative claim, either in  
23 our complaint or in Miss Hodge's pleading,  
24 which is purely defensive.

25 I've never had an injunction ordered

1 in 32 years of practice in a case where the  
2 party that asked for the injunction did not  
3 have a claim for relief in the form of  
4 injunctive relief. And that's what's  
5 happened here. But as we lay out in the  
6 motion, the issue that is in play with these  
7 invoices, which is the personal liability of  
8 the NA members, is not in front of Your Honor  
9 in this case.

10 THE COURT: All right. Okay.  
11 So Attorney Wentzel, so that's what -- I  
12 believe that's what I read in the -- I think  
13 that's what I read in the motion for the TRO.

14 ATTORNEY WENTZEL: I  
15 understand that that was a representation  
16 that was made by Miss Hodge, but when you  
17 read our motion, Your Honor, you're going to  
18 see that there was quite a lot of information  
19 that was not disclosed to Your Honor in  
20 connection with that motion.

21 THE COURT: Okay.

22 ATTORNEY WENTZEL: I would  
23 request, Your Honor, that you read it.

24 THE COURT: Oh, I will read  
25 it, but I just got it five minutes ago.

1 Okay.

2 ATTORNEY WENTZEL: I  
3 understand, but we got the TRO at 5:40 on  
4 Friday afternoon. You know, we addressed it  
5 over the weekend and we filed it yesterday.

6 But as I said, the developer, the  
7 Ritz-Carlton Club developer who wrote the  
8 declarations that are at issue here, they  
9 paid the assessment without objection even  
10 before the motion for TRO was filed.

11 THE COURT: Okay.

12 ATTORNEY WENTZEL: And that's  
13 part of what we have in the motion papers  
14 before you. And also, the critically  
15 important fact that the issue about the  
16 members' personal liability is not raised in  
17 this case. The liability of NA for two of  
18 the years in question is in front of the case  
19 that's pending in front of Judge Tejo, which  
20 Your Honor will recall they opposed  
21 consolidation and Your Honor declined to  
22 order consolidation, saying that it was a  
23 separate issue.

24 The question of the past due debt  
25 for these assessments is not raised and it's

1 not properly before the Court here. This is  
2 an action to cancel a deed and to quiet  
3 title. And there is no pleading or claim for  
4 injunctive relief by the Neighborhood  
5 Association in this case at all.

6 THE COURT: Okay.

7 ATTORNEY WENTZEL: And I  
8 object to the injunction entered without a  
9 pleading asking for an injunctive relief.

10 THE COURT: All right. So the  
11 TRO stands as it was issued on Friday. I  
12 just wanted to have the conference, as I  
13 stated before, to see if there was any issue  
14 or any movement with respect to these  
15 invoices. And there's been none, per say.

16 ATTORNEY WENTZEL: Your Honor,  
17 if I may.

18 THE COURT: No, no. One  
19 second. But if -- this matter is scheduled  
20 for the hearing on Friday, so we will address  
21 all of the factors on Friday for this  
22 injunctive hearing.

23 ATTORNEY WENTZEL: Okay. I  
24 just wanted to --

25 THE COURT: All right.

1 ATTORNEY TANKENSON HODGE:

2 Thank you, Your Honor. And I would  
3 understand that at that time is when the  
4 Court would hear any argument about the Great  
5 Bay motion that Attorney Wentzel is  
6 discussing now?

7 THE COURT: Yes. Yes.

8 Because we are both at a disadvantage at this  
9 point. When I say that, I mean -- like I  
10 said, I just received it and the defendants  
11 just received it also.

12 So -- okay. So I take it there's  
13 nothing else for us to discuss at this  
14 conference, and we will --

15 ATTORNEY WILCZYNSKI: Your  
16 Honor.

17 ATTORNEY WENTZEL: Could I  
18 make one clarification, Your Honor.

19 THE COURT: Sure. Sure.

20 ATTORNEY WENTZEL: We  
21 have undertaken --

22 THE COURT: Keep your voice  
23 up, Attorney Wentzel.

24 ATTORNEY WENTZEL: The comment  
25 made by Miss Hodge that there's been nothing



1 done to comply with your TRO is simply  
2 incorrect. We have undertaken to comply with  
3 it despite our objections stated in our  
4 motion to dissolve it.

5 Our client, over the weekend, passed  
6 the required unanimous written consent to  
7 comply with the Court's order, and we sent  
8 the consent and the Court's order to the  
9 billing agent. So we have complied. There  
10 was no requirement in Your Honor's order that  
11 we send something to --

12 THE COURT: Yes, but the  
13 billing agent -- but the invoices were still  
14 sent out.

15 ATTORNEY WENTZEL: They had  
16 already been sent out. That was a process  
17 that took many weeks --

18 THE COURT: And there was  
19 nothing done to say put a hold or a halt on  
20 the invoices at this time because of a TRO.  
21 That's what I'm understanding from the  
22 Plaintiffs.

23 ATTORNEY WENTZEL: We are the  
24 Plaintiffs, Your Honor.

25 THE COURT: Yes, yes. That's

1 what I'm saying. That's what I'm  
2 understanding from you and Attorney  
3 Wilczynski.

4 ATTORNEY WENTZEL: There is no  
5 requirement or direction in Your Honor's TRO  
6 order that we send out any communication.  
7 Miss Hodge sent out Your Honor's TRO order  
8 almost immediately to all of the Neighborhood  
9 Association so they all have the order.

10 Many of them had contacted us for a  
11 refund of the assessment they had already  
12 paid. But -- so we didn't see a need to  
13 duplicate exactly what Miss Hodge did, given  
14 that it wasn't directed to us in the order  
15 that she drafted.

16 THE COURT: Yes, but Attorney  
17 Wentzel, your decision not to do anything  
18 proactively is still basically saying we  
19 don't have to do anything; they received  
20 the -- the invoices were already sent out;  
21 you did not specifically state that there  
22 needs to be a stop or place a halt on  
23 payments or issuance or any additional  
24 issuance of these invoices, so therefore  
25 you're basically not in compliance with the

1 TRO that was issued.

2 But I don't want to argue, you know,  
3 I don't want us to get into any arguments at  
4 this point. Let us handle these issues on  
5 Friday when we have the opportunity to review  
6 everything in detail and be fully prepared  
7 for the hearing.

8 ATTORNEY WENTZEL: Very good,  
9 Your Honor.

10 THE COURT: How many witnesses  
11 on each side?

12 ATTORNEY TANKENSON HODGE: I  
13 only am aware of one for us at the moment,  
14 Your Honor, although now that I am aware that  
15 there's this motion from Great Bay, I'll need  
16 to review and see whether that will require  
17 any other witnesses.

18 THE COURT: Okay.

19 Attorney Wentzel or Attorney  
20 Wilczynski. I think I lost Attorney  
21 Wilczynski.

22 ATTORNEY WENTZEL: Thank you,  
23 Your Honor.

24 THE COURT: I think he dropped  
25 off.

1                   ATTORNEY WENTZEL: I'm sure  
2 he'll dial back in.

3                   Right now we would anticipate two,  
4 possibly three witnesses. There's a witness  
5 that we're not clear on for availability yet  
6 but we'll have two, maybe three.

7                   THE COURT: Okay. So we're  
8 look at about three to -- maybe five  
9 witnesses in total?

10                  ATTORNEY TANKENSON HODGE: I  
11 think that should be a maximum, Judge.

12                  THE COURT: Okay.

13                  ATTORNEY WENTZEL: How does  
14 Your Honor want to handle the exhibits?

15                  THE COURT: So you can submit  
16 the exhibits in advance. You can submit them  
17 by Thursday afternoon, and also I will screen  
18 share at the time of the hearing. So you can  
19 still -- you would still have the opportunity  
20 to screen share.

21                  ATTORNEY WILCZYNSKI: Your  
22 Honor, it won't be necessary for us to use  
23 the case line's program, right?

24                  THE COURT: No. Not at this  
25 point, no.

1                   ATTORNEY WILCZYNSKI: Just for  
2 operations, Your Honor.

3                   THE COURT: Okay. No. Just  
4 submit everything in advance.

5                   ATTORNEY TANKENSON HODGE: All  
6 right, Your Honor.

7                   ATTORNEY WENTZEL: Thank you,  
8 Your Honor.

9                   THE COURT: By Thursday  
10 afternoon will suffice. All right? Okay.

11                   ATTORNEY WILCZYNSKI: Your  
12 Honor, before we go on --

13                   THE COURT: Sure.

14                   ATTORNEY WILCZYNSKI: There  
15 were a number of issues that actually relate  
16 to the real case of the deed cancellation.  
17 There was some discovery issues, there were  
18 some -- there were a couple of motions.  
19 There was a motion for contempt. There's my  
20 request for scheduling orders that I've been  
21 made -- for new scheduling orders to the  
22 discovery, and those really -- I'm glad to  
23 have this opportunity to speak with the Court  
24 after a couple years on this, because we do  
25 need a revised scheduling order. We have

1 needed it from the beginning, and the only  
2 reason that Attorney Hodge refused to provide  
3 any discovery information to us at all is  
4 because we missed the deadline by -- a  
5 deadline is due on the 19th, which is why  
6 we've been asking for a new scheduling order  
7 and a status conference to discuss that  
8 issue.

9 We've gotten most of the information  
10 in written form from the other case, but I  
11 thought that it's -- that matters so much, as  
12 we would like the discovery responses in this  
13 case. We have provided a plethora of  
14 information to the other side, and I guess so  
15 much so that they've complained that we've  
16 given them too much and whatever.

17 At the very least, it would be  
18 appropriate if we could create a new  
19 scheduling order to get this matter moving  
20 forward. Other than this what now I consider  
21 to be just a -- well, the tail wagging the  
22 horse.

23 ATTORNEY TANKENSON HODGE: So,  
24 Your Honor, I think it will be appropriate  
25 after the hearing on Friday and the Court's

1 determination on the prudence of the  
2 preliminary injunction and other matters that  
3 will properly be before you then to determine  
4 that the party should confer on a scheduling  
5 order. It may be that many matters would be  
6 resolved by a decision on the preliminary  
7 injunction.

8 I certainly would disagree with  
9 Counsel's position on where the problems were  
10 with discovery. It was not that he gave us a  
11 plethora of discovery, it's that he violated  
12 the Court's order and then gave us a tsunami  
13 of unexplained documents, hundred thousand  
14 pages of documents that were unexplained.

15 So, this is probably not the perfect  
16 time to argue that aspect of our dispute, but  
17 I think a scheduling order after the decision  
18 is made on a preliminary injunction would be  
19 an appropriate next step.

20 ATTORNEY WILCZYNSKI: As much  
21 as I respect Attorney Hodge and her opinions,  
22 I would respectfully disagree. The TRO has  
23 nothing to do with this case. This case is  
24 about a deed cancellation. And to conjoin an  
25 action for a TRO regarding an assessment

1 which is more properly before -- should have  
2 been for Judge Tejo -- to the extent that  
3 it's proper at all, it has nothing to do with  
4 the schedule that is required -- that should  
5 be required in this case. There's no  
6 decision that the Court will make on Friday  
7 would relate in any way to the essential part  
8 of this case, which is a deed cancellation.  
9 And it's very obvious to me.

10 THE COURT: Okay. I  
11 understand. I understand. Let me think  
12 about it, Attorney Wilczynski.

13 ATTORNEY WILCZYNSKI: Thank  
14 you.

15 THE COURT: Yes. So let us  
16 focus on what we have before us for Friday,  
17 and then we will take it from there, okay?

18 ATTORNEY WENTZEL: Very good,  
19 Your Honor.

20 ATTORNEY TANKENSON HODGE:  
21 Thank you, Your Honor.

22 THE COURT: All right. Thank  
23 you all. Thank you.

24 ATTORNEY WILCZYNSKI: Okie  
25 dokie, Your Honor.



1 THE COURT: Okay. Thank you.  
2 You're excused.

3 ATTORNEY WILCZYNSKI: Actually  
4 I have the other matter with Your Honor.

5 THE COURT: Al right.  
6 Thank you, Attorney Wentzel.

7 ATTORNEY WENTZEL: Thank you,  
8 Your Honor.

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11 [The above matter concluded.]

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**CERTIFICATE OF REPORTER**

I, ARLENE STEPHENS DONOVAN, an Official Reporter of the Superior Court of the Virgin Islands, certify that in my official capacity of reporting by machine shorthand via Zoom, I did transcribe the proceedings in the case of Great Bay Condominium Owners Association, Inc., v The Neighborhood Association, Inc., in said court, on November 16, 2021, which consist of 26 pages.

IN WITNESS WHEREOF, I affix my signature this 4th day of February, 2022, which certifies this to be a true and accurate transcript.

*Arlene Donovan, RMR*  
ARLENE STEPHENS DONOVAN, RMR  
OFFICIAL COURT REPORTER II

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.	)	
	)	CIVIL NO. ST-18-CV-768
PLAINTIFF,	)	
V.	)	ACTION FOR DECLARATORY JUDGMENT, TO CANCEL DEED AND TO QUIET TITLE
THE NEIGHBORHOOD ASSOCIATION, INC.	)	
	)	
DEFENDANT.	)	

**MEMORANDUM IN OPPOSITION TO MOTION TO DISSOLVE OR MODIFY  
TEMPORARY RESTRAINING ORDER**

**INTRODUCTION**

The Neighborhood Association, Inc. (“NA”) strongly disputes the contentions presented in Plaintiff, Great Bay’s Motion to Dissolve or Modify the TRO entered in this matter on Friday, November 12. The motion relies upon misstatements of fact and law to undermine the Court’s authority to enter the order. Underlining words in a memorandum does not make them true. Here, the allegedly “undisputed” and “highly material facts” are actually irrelevant distractions, based upon an unsworn opinion letter from an attorney who is not a member of the Virgin Islands Bar, does not represent any party that has appeared in this case, and whose purported interpretation of documents is simply not binding on these parties or this Court. Indeed, Great Bay’s characterization of this unsworn opinion of “outside counsel” as representing the view of NA’s “most significant and important member” suggests that individual members, who lack the massive wealth and power of this particular institutional member, are not entitled to equal consideration by the Court in this emergency situation. Equally unavailing is the suggestion that this opinion of a single private lawyer from another jurisdiction is binding upon this Court or these parties. As more fully demonstrated below, the Great Bay reliance upon this opinion of counsel of a non-party is

neither undisputed nor material to the resolution of this motion. Further, the opinion of this outside counsel for a non-party, was and is disputed by NA, and remains subject to clear dispute. Put simply, the mere opinion of one lawyer for a non-party is not a matter that NA was obligated to present to the Court in connection with the motion for a TRO, and that opinion carries no more weight than the opinion of any other attorney. The legal determination of the right of Great Bay to impose assessments upon individual NA members for dues for a unit they do not own is entirely within the discretion of this Court at this stage in the proceedings.

Similarly, Great Bay alleges that NA was required to know and mention in its motion for TRO that Marriott International reportedly paid the disputed assessment. In fact, NA was not notified by that entity that it had paid the assessment, nor was there any notification to NA of the payment by the “managing agent” for NA.<sup>1</sup> In any case, that payment was allegedly made before the TRO was entered, and it remains to be seen whether the Marriott entity that is said to have paid the assessment “without objection”, may, in light of the Court’s order, wish to reconsider and request a refund.

I. THE COURT IS NOT LIMITED TO ENTERING A TRO OR A PRELIMINARY INJUNCTION TO A CASE WHERE IT IS SOUGHT IN THE PLEADINGS, AS THE PURPOSE OF THESE REMEDIES IS TO PRESERVE THE STATUS QUO WHILE THE CASE IS PENDING.

Contrary to the claim of Great Bay that the Court lacks the power to issue this TRO or a related preliminary injunction because that specific relief was not sought in the pleadings, citing *Wright & Miller and Caribbean Healthways, Inc. v. James*, 55 V.I. 691, 699 (2011), the court’s power to do so is clear. While preliminary injunctive relief is usually requested in the complaint, it may also be requested by motion or by an order to show cause. *Moore’s Fed. Practice*, 65.21[1].

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<sup>1</sup> Great Bay recites that the “managing agent” for the “Developer”, which is also the managing agent for Great Bay and NA, paid the assessment for Marriott, shortly before the motion for TRO was filed. If that is so, it is and was unknown to NA.

“The purpose of a preliminary injunction is to preserve the status quo between the parties pending a final determination on the merits of the suit. Preliminary injunctive relief usually is requested in the complaint but may also be made by a motion.”

Neither does *Caribbean Healthways* hold that a TRO or preliminary injunction may not enter without an underlying prayer in a complaint for that injunctive relief. In fact, that case held that a permanent injunction issued by the lower court was too broad in affording relief beyond what the plaintiff sought.<sup>2</sup> The purpose of a TRO and a preliminary injunction is to preserve the status quo between the parties pending a final determination on the merits of the suit. Here, that is precisely the purpose and effect of the TRO entered by this Court. Great Bay filed its suit alleging that the deed to the commercial unit in question, delivered and recorded, should be held invalid, and expressly asking the court to enter a declaratory judgment that “[t]he Neighborhood Association, Inc. is the owner of the subject property known as “Commercial Unit CU-1”...[and that] the purported conveyance of the aforementioned property, Commercial Unit CU-1, by the Neighborhood Association, Inc, to the Great Bay Condominium Owners Association, Inc...is void ab initio...” (Complaint, para. 68).

Thus, Great Bay has asked this Court to adjudicate the ownership of this commercial unit in this case, and to hold that title is not in Great Bay in accord with the recorded deed, but remains instead in Neighborhood Association. If their claim fails, as NA’s answer demands, then the adjudication in this case will be that Great Bay owns that unit. In that case, by virtue of all the relevant law cited in NA’s motion for TRO, the obligation for common charges for that unit is

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<sup>2</sup> The Court in *Caribbean Healthways* said, “[w]e conclude that the Superior Court did not abuse its discretion by entering the injunction against Healthways....However, because the injunction is too broad, we reverse...and remand for the Superior Court to reconsider the scope of the injunction...” 55 VI at 700-701.

properly upon Great Bay as the owner, from the date of its deed to the end of the litigation.<sup>3</sup> For the same reason, allowing Great Bay to extract common charges for that very unit from individual members of NA, who are not and never were the owner of the unit, would be unlawful and would result in irreparable harm, as specified in the motion and supporting affidavit, because of the lockout penalty and related sanctions imposed upon anyone who does not pay a disputed assessment – even if the assessment is actually and utterly illegal.

Likewise, NA concedes that if Great Bay prevails in its suit on this claim for declaratory judgment, and the Court ultimately holds that NA is the owner of the unit despite the deed to Great Bay, then NA would be responsible for those common charges as the owner. But there, too, the individual members of NA would not be subject to personal assessment of those common charges. They would be the obligation of the corporation, NA, and there still should be no lockout of individuals from their residential condominiums on this basis unless and until NA bills the individual members for their respective shares thereof, and they then fail to pay the same.

II. THE COURT IS NOT BOUND TO FOLLOW THE ALLEGED DECISION OF THE DECLARANT TO PAY THE DISPUTED ASSESSMENT AGAINST UNITS IT OWNS.

Great Bay states that the “Developer,” which it claims “drafted all the governing Declarations and amendments,” paid the disputed assessment before the motion for TRO was filed through the “managing agent” for that entity – a company that is also the managing agent for NA and Great Bay. That assertion, if true, is irrelevant, as the Declarant’s election to pay an assessment that would impose severe penalties if not restrained by the court, would not be binding upon any of the other members of NA. Put simply, the Declarant is not the copyright holder of the Declaration, and its chosen language incorporated in the recorded declaration and amendments is to be construed by the Court and others according to its reasonable interpretation. In the case of

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<sup>3</sup> In fact, in that case, the injunction should be made permanent.

ambiguity, the documents would be construed against the Declarant as the author of the documents. The common law rule of construction is that “in choosing among the reasonable meanings of a[n]...agreement or a term thereof, that meaning is generally preferred which operates against the party who supplies the words or from who a writing otherwise proceeds.” *Restatement of Contracts, Second*, §206.

It is true that the Virgin Islands Supreme Court has not yet adopted the common law *contra proferentem* doctrine, Virgin Islands courts regularly applied the doctrine prior to the date of these agreements. See, *eg, Topa Equities v. Bared Jewelers of the VI*, 44 VI 271, 279 (Terr. Ct. 2002) (“An ambiguous term in a contract is interpreted against the drafter”...) *Centeno v. King*, 14 VI 168, 180 (Terr. Ct. 1977), “An ambiguous document must be construed against its author.”)

Moreover, it is certainly clear that the opinion of the drafter on the meaning to be attached to these condominium documents, to the extent that meaning is subject to dispute in these proceedings, is not controlling and is entitled to absolutely no deference by the Court in consideration of the current motion. Whatever the Declarant RC Hotels (Virgin Islands) Inc. may say about its opinion on the right of Great Bay to force individual NA members to pay these common charges in perpetuity, irrespective of ownership of the unit, that opinion is of absolutely no moment, and certainly is not controlling on this Court.

**III. THE OPINION OF AN ATTORNEY FOR A NON-PARTY TO THIS CASE IS NEITHER CONTROLLING NOR ADMISSABLE.**

Great Bay treats the opinion of a single attorney, not admitted by this court, not representing any party in this proceeding, and certainly not one entitled to appear in this action or offer representations to the court as an officer of the court, as “admissions” which somehow rebut the findings in the TRO based upon the legal analysis in the moving papers and the supporting affidavit. That transformation of an inadmissible opinion of one attorney into an “admission” – a

term used to describe statements and positions of parties – is, at best, a mischaracterization.

For example, the language quoted in Great Bay’s motion as a supposed “admission by the Developer and the MVC Trust,” is completely at odds with the actual language of the documents, quoted by NA in its motion, including the relevant portions of the Fourth Amendment. Those documents all refer to the obligation to pay costs and expenses for the commercial unit as falling upon the “owner” or applying to a unit “owned by it.” Equally compelling, however, is the explicit provision of the Virgin Islands Code which supersedes any arguably inconsistent provision on condominium documents about who is responsible to pay common charges or “dues.” Title 28 Virgin Islands Code §909, expressly provides that “[t]he common expenses shall be charged to, the apartment owners according to the percentage of the undivided interest in the common areas and facilities.”

NA notes that this lawyer’s opinion letter, several years old now, was given in connection with a proposal under consideration to dissolve the Neighborhood Association as a corporation, and not in connection with the present issue. The author said she represented a member of NA, and did not purport to speak for the original Declarant. NA disagreed with the opinion then, and disagrees now. Given that context, the opinion is particularly irrelevant to this motion. What is clear, in any event, is that the opinion is not binding upon these parties or this Court.

Even if the Declarant had inexplicably intended to impose an eternal obligation to pay the common charges for this commercial unit upon the unfortunate persons who purchased their condominium interests as members in NA, unaware of such a bizarre plan, that intent could not extinguish the statutory rule about the responsibility for such charges. It is the owner of the apartment and not a mere member of a non-profit corporation that was formerly the owner, who has the duty to pay those charges.



**IV. THE MERE OPINION OF AN ATTORNEY FOR THE DECLARANT DOES NOT ELIMINATE THE IRREPARABLE HARM TO NA MEMBERS IN THIS RETROACTIVE ASSESSMENT OF COMMON CHARGES AGAINST NON-OWNERS OF THE UNIT.**

Great Bay argues that NA's showing of irreparable harm is defeated by Great Bay's reference to the disputed non-admitted attorney's opinion and a claim that the NA members can avoid irreparable harm by paying the extortion demanded. But the reality is that NA members cannot and should not be forced to pay thousands of dollars they do not owe to protect themselves from what amounts to self-help, wrongful eviction from their residences. Great Bay clearly managed to operate its huge condominium complex, with over a thousand members, without threatening NA members with lockout to extract these old, retroactive assessments, until they seem to have grown weary of waiting for their cases to be decided by the Court, leading to the recent and sudden demand for payment upon the NA members individually. The twisted logic here is that Great Bay insists it may not merely demand these retroactive payments, with interest and late fees, upon explicit threat of lockout, but that because someday an owner might get a refund of an illegal assessment, paid now to protect the right to use their own condominium, they would have suffered no "irreparable harm." This ignores those who may not be able to pay the thousands of dollars demanded. It ignores those who may have to choose between paying the ransom for the right to use their own condominium and other important matters to which they would otherwise put those funds.

Here, Great Bay cites a section of the original declaration which prohibits owners who are members from withholding payment based upon a dispute over the validity of any assessment. (Motion to Dissolve, at p. 11-12). However, that very provision makes it all the more clear that the court's intervention is needed, because the members are denied the right to withhold a payment in a dispute, even where it is illegal and unjustified, forcing members to pay without recourse that

extorted sum, unless the court grants the temporary relief sought. Only with a TRO and a preliminary injunction can the members of NA be protected. Otherwise, the unlawful assessments become self-fulfilling prophecies, whereby simply demanded payment, Great Bay is entitled to payment, despite the legal defects in its position. Simply put, only the Court can protect the members of NA from this Great Bay overreach.

**V. THE CLAIMED HARM TO GREAT BAY IS FICTIONAL**

Great Bay claims that the mere distribution of the TRO somehow caused it irreparable harm. The suggestion is that it is embarrassed by the Court's finding that its assessment should be rescinded as improper under the applicable agreements and governing Virgin Islands law. While it may be true that Great Bay is embarrassed to have been caught in this improper scheme, that embarrassment is of its own making, as it had no reason to issue these assessments to NA members, retroactive for a period of many years, rather than simply awaiting the decision in this case about who the lawful owner of CU-1 is adjudged to be. Nothing could be more certain than this. If Great Bay is the lawful owner of CU-1, and the court so finds, it is the entity responsible for any obligation to pay the common charges for that unit. Its new theory, that no matter who owns the Unit, the duty to pay common charges will always remain upon the NA members, like an eternal plague, is so completely at odds with both the governing condominium documents and the controlling Virgin Islands statute on common expenses, that the current TRO is not only proper but the only possible means of protecting the status quo for NA members until this case is decided.

Neither is the reported demand by "several" NA members, to a refund for amounts some paid under threat of lockout if they did not pay by the demand date, evidence of irreparable harm to Great Bay, nor is the possibility that others will make a similar demand. Such demands are understandable and appropriate because Great Bay should not have issued these invoices at all.

Under the current TRO, Great Bay has not been ordered to not make such refunds, but NA submits that it would be proper to require it to do so, to allow the status quo to remain until the Court decides the remaining merits of the case. Then, if NA prevails, the duty to pay common charges will remain with Great Bay as owner. If Great Bay prevails on the merits, and the Court adjudges NA to be the owner of the Unit, NA will be responsible for any valid common charges assessed. In neither event, however, will the NA members personally be responsible for those charges, so there will be no harm to Great Bay in this temporary injunctive relief.

**VI. THE TRO SHOULD NOT BE MODIFIED TO VACATE THE REQUIREMENT TO RESCIND THE INVOICES.**

Great Bay argues that the TRO is to preserve the status quo – and that is agreed – but it incorrectly contends that ordering the disputed invoices rescinded somehow violates that principle. This is not correct. The invoices are the assessments that impose upon NA members the numerous penalties, such as lockout from their residences, that follow from the mere existence of these improper charges. The needed protection of the status quo – the right of NA members not to pay the disputed Great Bay assessment for a unit they do not own, and to be protected from the various enforcement penalties Great Bay and its related entities impose upon those who dare to withhold payment – can only be accomplished with this order to rescind the invoices until the case is decided on the merits. This is not like the father being ordered to return a child to a mother. This is a directive to rescind and withdraw a billing to persons who are not properly subject to that bill. The term “rescind” could easily be replaced with cancel, withdraw, vacate, or the like. But the impact is, as Great Bay acknowledges, that they have been ordered to make their invoices void by the action of a superior authority, namely this Court, while the case is pending. The ability of Great Bay to invoice NA members for a multi-year, retroactive period, including not only interest but late fees, when they saw fit to do so, makes it clear that if they should actually prevail in this case

at its conclusion – as improbable as that appears – they could simply do the same thing again, and issue new invoices to members for the retroactive period of their choosing, with all the extra interest and late fees they have already threatened to impose upon NA members with the current invoicing. Nothing in the Court’s order is legally improper, and the temporary relief afforded to NA members, which NA would ask the Court to extend with a preliminary injunction to the conclusion of the case, is fully warranted by and under V.I.R.Civ.P. 65.

**VII. THE COURT SHOULD EXERCISE ITS DISCRETION TO FOREGO A BOND, BUT IF IT DETERMINES THAT SOME SECURITY SHOULD BE POSTED, THE AMOUNT SHOULD BE DETERMINED BASED UPON THE ACTUAL COST TO GREAT BAY OF SENDING OUT THE ONE PAGE MEMORANDUM DATED NOVEMBER 16, 2021, TO NA MEMBERS, BY EMAIL, AS GREAT BAY WILL SUFFER NO HARM IF THE INJUNCTION IS LATER REVERSED, BECAUSE IT CAN THEN ISSUE THE SAME INVOICES FOR THE FULL PERIOD, WITH INTEREST, AND RECOVER EXACTLY WHAT IT WOULD HAVE RECOVERED IN THE CURRENT INVOICES.**

Rule 65(c) does provide that the court should issue security in an “amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” Here, the amount of such a “costs and damages” are plainly negligible, because there is no question that Great Bay will not suffer loss of the amount it seeks in common charges now, any more than it suffered that loss in not invoicing the same owners for years from 2017 to the present. As noted above, if the injunction is subsequently vacated for any reason, Great Bay can and would certainly issue new invoices for the same charges, and additional years, including interest and even late fees. That insures they would suffer no damages. As to costs, the distribution of a one-page memorandum by email to NA members, advising of the TRO and the rescinding of invoices, almost certainly cost nothing. Thus, a modest or even nominal bond would be fully adequate in this case, if the court were inclined to require one.

**CONCLUSION**

NA has demonstrated that (1) there is a reasonable probability of eventual success in this litigation; (2) if injunctive relief is denied, NA and its members will suffer irreparable harm; (3) the harm to Great Bay is not outweighed by the harm to NA and its members; and (4) the public interest favors injunctive relief in this case. Thus, a TRO was properly entered and should not be dissolved, and a preliminary injunction should issue, after the required hearing, as scheduled.

DATED: November 18, 2021

RESPECTFULLY SUBMITTED,

/s/ Maria T. Hodge  
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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 18th day of November, 2021, a true and correct copy of the foregoing was served via the Court's electronic filing system, upon:

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/s/ Maria T. Hodge



*Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.*  
Case No. ST-18-CV-768  
Plaintiff's Opposition to Defendant's Motion for Temporary Restraining Order and  
Preliminary Injunction

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that this document complies with the page and word limitation set forth in V.I.R.Civ.P. 6-1(e).

**I HEREBY CERTIFY** that on this 18th day of November, 2021, I caused a true and exact copy of the foregoing **PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION** to be filed with the Superior Court's C-Track E-Filing system which will send notice to:

MARIA T. HODGE, ESQ.  
Hodge & Hodge  
1340 Taarneberg  
St. Thomas VI 00802  
Tel: (340) 774-6845  
Fax: (340) 714-1848  
[maria@hodgelawvi.com](mailto:maria@hodgelawvi.com)  
***Counsel for Defendant***

/s/ W. MARK WILCZYNSKI



# E-Filing Submission Confirmation

The following electronic filing(s) were successfully submitted. Please keep a copy of this confirmation for your records.

**Submitted Date** 11-18-2021 11:54 AM  
**E-File Confirmation #** 15441637250897885

**Filings Submitted:**

<b>Court</b>	<b>Case Number</b>	<b>Filing Type(s)</b>	<b>Documents</b>	<b>Fees</b>
Superior Court of the Virgin Islands	ST-2018-CV-00768	Response - Opposition	1	\$ 0.00
<u>Total</u>				<u>\$ 0.00</u>

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

<b>GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.</b>	)	<b>CIVIL NO. ST-18-CV-768</b>
	)	
<b>PLAINTIFF,</b>	)	<b>ACTION FOR DECLARATORY JUDGMENT, TO CANCEL DEED AND TO QUIET TITLE</b>
<b>v.</b>	)	
	)	
<b>THE NEIGHBORHOOD ASSOCIATION, INC.</b>	)	
	)	
<b>DEFENDANT.</b>	)	

**PLAINTIFF'S EXHIBIT LIST**

EXHIBIT NO.	DOCUMENT
EXHIBIT 1	Affidavit of David F. Wentzel
EXHIBIT 1-A	Letter of Margaret Rolando
EXHIBIT 1-B	Bio of Margaret Rolando
EXHIBIT 2	Affidavit of Abigail Chung
EXHIBIT 2-A	St. Thomas Inventory Stats
EXHIBIT 2-B	Letter from Richard Hayward
EXHIBIT 2-C	Email dated 11/13/21 of the Board of The Neighborhood Association, Inc. sent to all Suite Owners
EXHIBIT 2-D	Great Bay Condominium Association Inc.'s Letter dated 10/22/21 that accompanied Invoice to Suite Owners
EXHIBIT 3	Fifth Amendment to Condominium Declaration
EXHIBIT 4	Fourth Amendment to Supplementary Declaration (Club)

*Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.*  
Case No. ST-18-CV-768  
Plaintiff's Exhibit List

<b>EXHIBIT NO.</b>	<b>DOCUMENT</b>
EXHIBIT 5	Articles of Incorporation of Great Bay Condominium Association, Inc.
EXHIBIT 6	ByLaws of Great Bay Condominium Association, Inc.
EXHIBIT 7	Articles of Incorporation of The Neighborhood Association, Inc.
EXHIBIT 8	ByLaws of The Neighborhood Association, Inc.
EXHIBIT 9	RCC St. Thomas Declaration of Condominium
EXHIBIT 10	Fourth Amendment to Condominium Declaration
EXHIBIT 11	Complaint filed in ST-18-CV-768
EXHIBIT 12	Answer of The Neighborhood Association, Inc. in ST-18-CV-768
EXHIBIT 13	Complaint filed in ST-19-CV-650
EXHIBIT 14	Order entered 12/22/20 by the Court on Great Bay Condominium Association, Inc.'s Motion for Consolidation

Respectfully submitted,

Dated: November 18, 2021

**LAW OFFICE OF W. MARK WILCZYNSKI, P.C.**

/s/ W. Mark Wilczynski  
**W. MARK WILCZYNSKI, ESQ.**  
P.O. Box 1150  
St. Thomas, VI 00804-1150  
Tel: (340) 774-4547  
Email: [Mark@usvilaw.com](mailto:Mark@usvilaw.com)  
V. I. Bar No.: 515  
**Attorney for Great Bay Condominium  
Owners Association, Inc.**

*Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.*  
Case No. ST-18-CV-768  
Plaintiff's Exhibit List

- AND -

**DAVID F. WENTZEL, ESQ.**  
Wentzel Law Offices  
77 W. Washington St., Suite 2100  
Chicago, IL 60602  
Tel: (312) 697-0500  
Fax: (312) 697-0505  
Email: [dwentzel@wentzellaw.com](mailto:dwentzel@wentzellaw.com)  
**Attorney for Great Bay Condominium  
Owners Association, Inc.**

# E-Filing Submission Confirmation

The following electronic filing(s) were successfully submitted. Please keep a copy of this confirmation for your records.

**Submitted Date** 11-18-2021 05:11 PM  
**E-File Confirmation #** 15441637269893184

**Filings Submitted:**

<b>Court</b>	<b>Case Number</b>	<b>Filing Type(s)</b>	<b>Documents</b>	<b>Fees</b>
Superior Court of the Virgin Islands	ST-2018-CV-00768	Notice - Notice of Filing	1	\$ 0.00
<u>Total</u>				<u>\$ 0.00</u>

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

<u>GREAT BAY CONDOMINIUM OWNERS</u>	)	
<u>ASSOCIATION, INC.</u>	)	CIVIL NO. ST-18-CV-768
	)	
PLAINTIFF,	)	ACTION FOR DECLARATORY
v.	)	JUDGMENT, TO CANCEL DEED
	)	AND TO QUIET TITLE
THE NEIGHBORHOOD ASSOCIATION, INC.	)	
	)	
<u>DEFENDANT.</u>	)	

**NOTICE OF FILING**

Plaintiff, Great Bay Condominium Association, Inc., by and through its undersigned counsel, hereby gives notice of the filing of "Exhibit 2-D" to the Affidavit of Abigail Chung in Support of Plaintiff's Motion to Dissolve or Modify Temporary Restraining Order, copies of which are attached.

1. **EXHIBIT 2-D** – Great Bay Condominium Association, Inc.'s Letter dated October 22, 2021 which accompanied the Invoice sent to Suite Owners. This document was referred to in paragraph 15 of the Affidavit of Abigail Chung (Exhibit 2) and was inadvertently not attached and mis-referenced as Exhibit C. The document attached hereto should have been referred to in paragraph 15 of Abigail Chung's Affidavit as Exhibit 2-D.

Respectfully Submitted,

**LAW OFFICE OF W. MARK WILCZYNSKI, P.C.**

Dated November 18, 2021

/s/ W. Mark Wilczynski  
**W. MARK WILCZYNSKI, ESQ.**  
P.O. Box 1150  
St. Thomas, VI 00804-1150  
Tel: (340) 774-4547  
Email: [Mark@usvilaw.com](mailto:Mark@usvilaw.com)  
V. I. Bar No.: 515  
**Attorney for Great Bay Condominium  
Owners Association, Inc.**

**A.000558**

*Great Bay Condominium Association, Inc. v. The Neighborhood Association, Inc.*  
Case No. ST-2018-CV-768  
Notice of Filing

- AND -

**DAVID F. WENTZEL, ESQ.**  
Wentzel Law Offices  
77 W. Washington St., Suite 2100  
Chicago, IL 60602  
Tel: (312) 697-0500  
Fax: (312) 697-0505  
Email: [dwentzel@wentzellaw.com](mailto:dwentzel@wentzellaw.com)  
**Attorney for Great Bay Condominium  
Owners Association, Inc.**

**CERTIFICATE OF SERVICE**

I **CERTIFY** that on this the 18th day of November 2021, I caused a true and exact copy of the foregoing **NOTICE OF FILING** to be filed using the Court's C-Track E-Filing system which will send notice, unless otherwise indicated below, of same:

**MARIA T. HODGE, ESQ.**  
Hodge & Hodge  
1340 Taarneberg  
St. Thomas VI 00802  
Tel: (340) 774-6845  
Fax: (340) 714-1848  
[maria@hodgelawvi.com](mailto:maria@hodgelawvi.com)  
***Counsel for Defendant***

By:       /s/ Carolyn C. Duncan

# EXHIBIT 2-D





6910 Great Bay, St. Thomas, USVI 00802

BoardStThomas@aol.com

1-340-715-9042



October 22, 2021

TO: All Owners of Residence Interests in Heliconia and Gardenia Buildings

Re: Invoice for Unpaid Maintenance Assessments 2017 through 2021

As you may know there has been an ongoing dispute with the Board of the Neighborhood Association (NA) regarding the purported conveyance of the Commercial Unit-1 ("CU-1") located on the Fifth Floor of the Gardenia Building. Despite GBCOA's best efforts to resolve the dispute and related litigation, intransigence by NA's Board has frustrated and prevented any resolution. The Management Company, which has intractable conflicts of interest as the managing entity for both GBCOA and NA, has been unable to facilitate a resolution.

In the meantime, the annual maintenance fee assessments relating to CU-1 for 2017 through 2021 remain unpaid. These assessments, including Late Fees and Interest as provided for in the Declarations, total nearly \$1 million.

CU-1's delinquent status has created a substantial financial burden on GBCOA's finances that we, as the governing Association for all Members, can no longer allow to go unaddressed. The purpose of this communication is to advise you that, as set forth in the governing Declarations for the Club at Great Bay Condominium, the Suites Owners remain personally responsible for payment of all dues on CU-1. Accordingly, enclosed is an invoice reflecting your proportionate share of delinquent assessments for CU-1 including Late Fees and Interest for 2017 through 2021.

Responsibility for payment of all assessments relating to CU-1 was established in the Amendments to the Declarations that RC Hotels (Virgin Islands), Inc. (hereinafter "Ritz-Carlton") filed when it submitted the Heliconia and Gardenia buildings to the Club in 2006. At that time, CU-1 was known as the Suites Lounge. Its purpose was to provide food and beverage services exclusively to the owners and occupants of the Suites in the Heliconia and Gardenia buildings.

From 2006 through 2016, the Suites Owners, through NA, were invoiced for all annual assessments relating to CU-1. In 2014, the NA Board closed the Suites Lounge and converted it to a restaurant, the Grand Palazzo Club (GPC). The GBCOA Board consented to this change and to assist, waived the CU-1 dues for the first year of operation and waived 50% of the dues in the following two years in exchange for access to the GPC for all GBCOA Members. The Suites Owners continued to be invoiced for all dues not waived by GBCOA for CU-1.

As we previously advised in our December 19, 2018 communication to all GBCOA Members, within days after the Club was devastated by Hurricanes Irma and Maria in September 2017, NA's Board unilaterally attempted to transfer the Deed for CU-1 to GBCOA. The purpose, of course, was to attempt to transfer the financial burden of paying dues on CU-1 from the Suites Owners to all GBCOA Members. We promptly rejected the purported transfer and filed suit against NA in the Superior Courts of the Virgin Islands, which litigation remains ongoing.

It is the GBCOA Board's position that regardless of whether NA's attempted transfer of the Deed to CU-1 was legally effective, the Suites Owners remain personally responsible for all dues relating to CU-1. More particularly, the Fourth Amendment to the Condominium Declarations, which Ritz-Carlton executed and recorded when it submitted the Heliconia building to the Club in December 2005, clearly provides the Suites Owners are *exclusively responsible* for all assessments relating to CU-1; NA is merely the conduit for invoicing and collecting the assessments:

*All Owners of Residences* that are designated as a Two Bedroom Suite in Phase 5 or Phase 6 shall, in addition to being Members of the Condominium Association, be mandatory members of the Neighborhood Association whose contemplated sole initial purpose shall be to own and operate Commercial Unit CU-1, anticipated to be created in Phase 6, and which may provide certain food and beverage services for the exclusive benefit of the occupants from time to time of the Two Bedroom Suites, whether or not such occupants are Members of the Neighborhood Association. More particularly, and in accordance with the separate organizational and governing documents of the Neighborhood Association, *its members* shall control the Neighborhood Association and *be responsible for all costs and expenses related to the ownership, maintenance and operation of the Commercial Unit* owned by it, including but not limited to any services that it may elect to provide.

Another amendment to the Declarations filed the same day, titled Third Amendment to the Supplementary Declaration of Condominium for the Club at Great Bay Condominium (hereafter "Club Declaration"), submitted the Residence Interests (Suites) in the Heliconia Building to the interval form of ownership. That document likewise declares the Suites Owners solely responsible for all costs and expenses of CU-1 and, moreover, creates a "stacking" of liens for unpaid CU-1 dues. The lien created in favor of NA is *subordinate* to the lien created in favor of GBCOA:

*In addition to the lien in favor of the Members Association against each Residence or Residence Interest, as applicable, for any unpaid assessments and for interest accruing thereon, together with related charges, as set forth in the Declaration, all Owners of Residences that are designated as a Two Bedroom Suite shall, in addition, be subject to a lien in favor of the Neighborhood Association to secure any unpaid assessments, fees or special charges imposed on members of the Neighborhood Association ... All Neighborhood Association liens shall be subordinate to any Members Association lien ...*

In July 2006, when Ritz-Carlton submitted the Gardenia building and Suites Lounge to the Club, it filed the Fifth Amendment to the Condominium Declaration. Paragraph 5 of that Amendment expressly reaffirms the Suites Owners' exclusive financial responsibility for CU-1, whether or not NA's Board decides to operate it or provide any food or beverage services to the Suites Owners:

*All Owners of Residences* that are designated as a Two Bedroom Suite shall, in addition to being Members of the Condominium Association, be mandatory members of the Neighborhood Association whose sole purpose is to own and operate Commercial Unit CU-1, which shall be conveyed by Declarant to the Neighborhood Association and utilized for the exclusive benefit of the occupants from time to time of the Two Bedroom Suites, whether or not such occupants are Members of the Neighborhood Association, and as more particularly described in the organizational and governing documents of the Neighborhood Association. As a member of the Neighborhood Association, *Owners of Two Bedroom Suites are responsible for all costs and expenses of the ownership and operation of Commercial Unit CU-1*, including but not limited to any services that it may elect to provide.

On the same date, Ritz-Carlton filed the Fourth Amendment to the Club Declaration, which similarly declares the Suites Owners responsible for payment of all dues relating to CU-1 and provides a lien in favor of GBCOA for all such unpaid dues:

The twelve (12) Residences which are the subject of this amendment are Two Bedroom Suites and, as such, all Owners of Residence Interests therein shall in addition to being Members of the Condominium Association, be mandatory members of the Neighborhood Association, whose contemplated sole purpose shall be to own and operate Commercial Unit CU-1, and which may provide certain services for the exclusive benefit of the occupants from time to time of the Two Bedroom Suites, whether or not such occupants are Members of the Neighborhood Association. More particularly, and in accordance with the separate organizational and governing documents of the Neighborhood Association, *its members* shall control the Neighborhood Association *and be responsible for all costs and expenses related to the ownership and operation of the Commercial Unit CU-1, including but not limited to any services that it may elect to provide.*

*In addition to the lien in favor of the Members Association against each Residence or Residence Interest, as applicable, for any unpaid assessments and for interest accruing thereon, together with related charges, as set forth in the Declaration*, all Owners of Residences that are designated as a Two Bedroom Suite shall, in addition, be subject to a lien in favor of the Neighborhood Association to secure any unpaid assessments, fees or special charges imposed on members of the Neighborhood Association ...

All Neighborhood Association liens *shall be subordinate to any Members Association lien.*

The Suites Owners' responsibility to pay all dues for CU-1 are not tied to ownership of the Deed for CU-1. To the contrary, Ritz-Carlton did not transfer the Deed for CU-1 to NA until December 2008, three years after it officially submitted the Heliconia building to the Club and two and a half years after it officially submitted the Gardenia building to the Club. Nevertheless, the maintenance fee assessments for CU-1 were billed to and collected from the Suites Owners, exclusively, for 2006, 2007 and 2008. Thus, Ritz-Carlton's own actions are consistent with the express intentions declared in all amendments to the governing Declarations: that the Suites Owners are exclusively responsible to pay all dues relating to CU-1 regardless of who holds the Deed to CU-1.

The governing Declarations quoted above do not contemplate, and Virgin Islands law does not permit, waiver or abrogation of a Suite Owner's obligation to pay the assessments for CU-1 by abandonment or waiver of the use or enjoyment of any element of the Condominium property, including CU-1, nor do they contain any caveat terminating such payment obligations upon any transfer of the Deed for CU-1. As noted, Ritz-Carlton invoiced the Suites Owners exclusively for all assessments relating to the Suites Lounge even during the three years Ritz-Carlton held the Deed to CU-1. Just as Ritz-Carlton's transfer of the Deed to NA in December 2008 did not affect the Suites Owners' obligation to pay all assessments for CU-1, NA's purported transfer of the Deed to GBCOA in September 2017 did not cancel or affect the Suites Owners' exclusive financial responsibility to pay all assessments for CU-1.

Finally, the Articles of Incorporation of Great Bay Condominium Owners Association state in Article II(B) that the "objects and purposes for which the Association is formed" are "[t]o promote the general welfare of the Association and its Members *and to enforce the provisions of the Declaration.*" Article IV, titled "Powers," confers on GBCOA the power "*to make and collect assessments against members to defray the expenses of the corporation in administering the affairs of the Condominium, enforcing the Declaration and to use the proceeds of the assessments in carrying out the objects and purposes*" of the Club.

GBCOA issued invoices to NA for annual maintenance fees for CU-1 for 2017 and 2018. The Management Company, on November 20, 2018, formally declared NA delinquent in payment of these dues via a letter to NA's Board of Directors. NA's Board has failed to assess the Suites Owners for these charges or for the annual assessments for CU-1 for 2019 through 2021. Such failure, however, does not relieve the Suites Owners from their obligation to pay all assessments relating to CU-1. The ongoing dispute between GBCOA's Board and NA's Board does *not excuse* the Suites Owners' personal responsibility to pay all assessments for CU-1. To the contrary, as the original Declaration recorded by Ritz-Carlton establishing the Great Bay Condominium (a/k/a Ritz-Carlton Destination Club, St. Thomas) states in Section 9:

Each Member of a Residence is *personally liable* for all assessments made against the Residence pursuant to this Declaration, and the Members Association may bring an action for a money judgment against a delinquent Member to collect all sums due the Members Association, including interest, late charges, costs, and reasonable attorney fees. ...*No Member may withhold payment of any regular or special assessment or any portion thereof because of any dispute* which may exist between that Member and the Members Association, the directors of the Members Association, the manager retained by the Members Association or the Declarant or among any of them, *but rather each Member shall pay all assessments when due pending resolution of any dispute.*<sup>1</sup>

Accordingly, payment of the enclosed Invoice for delinquent assessments relating to CU-1 is due immediately. As a courtesy, the Members Association will waive 50% of Late Fees and Interest for all Suites Owners who accept and pay the invoice before November 9, 2021. If the Invoice is not paid in full within 30 days the Members Association will take further action as provided for in the Declarations.

Sincerely,

THE BOARD OF DIRECTORS

GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.

6910 GREAT BAY, ST. THOMAS, USVI 00802.

President: Abbey Chung

Vice-President: Steve Redan

Treasurer: Thomas Doyle

Secretary: Jimmy Archie

Director: Michael Gick

Enclosure: Invoice for Unpaid CU-1 Maintenance Assessments 2017-2021

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<sup>1</sup> All Declarations and Amendments quoted or otherwise referenced in this letter are accessible at [myritzcarltonclub.com](http://myritzcarltonclub.com). After logging in, go to the bottom right of the screen and under *News From the Club* click on *Your Club*. You will then see a menu on the left side of the screen called *My Membership* click on *Minutes and Documents*. Anyone experiencing difficulty logging in should contact Member Services.

# E-Filing Submission Confirmation

The following electronic filing(s) were successfully submitted. Please keep a copy of this confirmation for your records.

**Submitted Date** 11-18-2021 05:07 PM  
**E-File Confirmation #** 15441637269673992

**Filings Submitted:**

<b>Court</b>	<b>Case Number</b>	<b>Filing Type(s)</b>	<b>Documents</b>	<b>Fees</b>
Superior Court of the Virgin Islands	ST-2018-CV-00768	Notice - Notice of Filing	2	\$ 0.00
<u>Total</u>				<u>\$ 0.00</u>

IN THE SUPERIOR COURT  
OF THE VIRGIN ISLANDS

**FILED**

November 18, 2021 05:07 PM  
ST-2018-CV-00768  
TAMARA CHARLES  
CLERK OF THE COURT

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS and ST. JOHN

\*\*\*\*\*

GREAT BAY CONDOMINIUM OWNERS	)	
ASSOCIATION	)	
	)	Case No. ST-18-CV-768
Plaintiff	)	
	)	
vs.	)	ACTION FOR DAMAGES
	)	
THE NEIGHBORHOOD ASSOCIATION, INC.	)	
	)	
Defendant.	)	
_____	)	

**THE NEIGHBORHOOD ASSOCIATION, INC. NOTICE OF FILING EXHIBITS FOR  
HEARING ON PRELIMINARY INJUNCTION**

**COMES NOW**, Defendant, The Neighborhood Association, Inc., by and through undersigned counsel, Hodge & Hodge, by Maria Tankenson Hodge, Esq., and gives notice of the filing of the attached exhibits for consideration at the hearing on November 19, 2021, on Defendant’s Motion for Temporary Restraining Order and Preliminary Injunction, as requested by the Court. The court system would not accept the entire set of exhibits, possibly due to size, so Defendant resubmits herewith only the exhibits not already a part of the record, and attached to the affidavit in support of NA’s motion for Temporary Restraining Order and Preliminary Injunction.

**Respectfully submitted,  
HODGE & HODGE**

Dated: November 18, 2021

By:  /s/ Maria T. Hodge  
Maria Tankenson Hodge, Esq.  
1340 Taarneberg, St. Thomas, V.I. 00802  
Tel.: (340) 774-6845 || fax.: (340) 776-8900  
[maria@hodgelawvi.com](mailto:maria@hodgelawvi.com)  
*Attorney for Defendant, The Neighborhood  
Association, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 18th day of November, 2021, I caused a true and exact copy of the foregoing to be served via the Court's electronic filing system:

W. Mark Wilczynski, Esq.  
Palm Passage, Suite C20-22 || P.O. Box 1150  
St. Thomas, US Virgin Islands, 00801  
*Attorney for Plaintiff, Great Bay Condominium Owners Association*  
[mark@usvilaw.com](mailto:mark@usvilaw.com)

David F. Wentzel, Esq.  
Wentzel Law Offices  
77 W. Washington St. Suite 2100  
Chicago, Ill. 60602  
Email: [dwentzel@wentzellaw.com](mailto:dwentzel@wentzellaw.com)  
Counsel for Plaintiff

/s/ Maria T. Hodge

IN THE SUPERIOR COURT  
OF THE VIRGIN ISLANDS

**FILED**

November 18, 2021 05:07 PM

ST-2018-CV-00768

TAMARA CHARLES **NT'S EXHIBITS**  
CLERK OF THE COURT

EXHIBIT A – INVOICE FROM GREAT BAY TO CUTRONA FOR DUES FOR CU-1

EXHIBIT B = MEMO FROM GREAT BAY TO NA MEMBERS DATED 10/22/21

EXHIBIT C = NOTICE OF 10/1/21 FROM RITZ-CARLTON CLUB RE BEING “LOCKED OUT” IN CASE OF  
FAILURE TO PAY GREAT BAY INVOICES WITHIN 10 DAYS

EXHIBIT D – RITZ CARLTON DESTINATION CLUB BROCHURE DESCRIBING RIGHTS AND AMENITIES OF  
OWNERSHIP OF CONDOMINIUM IN CLUB

EXHIBIT E – THIRD AMENDMENT TO SUPPLEMENTARY DECLARATION OF CONDOMINIUM

EXHIBIT F – FOURTH AMENDMENT TO DECLARATION OF CONDOMINIUM

EXHIBIT G – FIFTH AMENDMENT TO SUPPLEMENTARY DECLARATION OF CONDOMINIUM

EXHIBIT H – DEMAND LETTER TO GREAT BAY TO RESCIND INVOICES FOR DUES FOR CU-1 DATED 11/3/21

EXHIBIT I - LETTER TO RC HOTELS (VIRGIN ISLANDS) INC DATED 11/28/17 FROM NEIGHBORHOOD  
ASSOCIATION DEFENDING TRANSFER OF TITLE TO CU-1 TO GREAT BAY

EXHIBIT J -EMAIL FROM GREAT BAY TO NA OWNERS ON 11 5 2021 DISPUTING NA POSITION OF 11 4 ON  
DUES

EXHIBIT K – MARIA HODGE EMAIL TO MARK WILCZYNSKI OF 11/13/21 RE TRO

EXHIBIT L – LTR FROM MARK WILCZYNSKI TO MARIA HODGE DATED 11/4/21 (SIC) RE TRO

EXHIBIT M – EMAIL FROM MARIA HODGE TO MARK WILCZYNSKI OF 11/14/21 RE TRO FOLLOW UP

EXHIBIT N AND N-1 – GREAT BAY LTR TO MARIA HODGE WITH ENCLOSED UNANIMOUS CONSENT

EXHIBIT O = MEMO FROM GREAT BAY TO NA MEMBERS 11/16/21 RE TRO

EXHIBIT P – DEMONSTRATIVE EXHIBIT

**A.000568**



IN THE SUPERIOR COURT  
OF THE VIRGIN ISLANDS

**FILED**

November 18, 2021 05:07 PM

ST-2018-CV-00768

TAMARA CHARLES

CLERK OF THE COURT

mail

Maria Hodge <maria@hodgetlawvi.com>

---

**Attached Documents ST-2018-CV-00768 - GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC. v. THE NEIGHBORHOOD ASSOCIATION, INC.**

---

Maria Hodge <maria@hodgetlawvi.com>  
To: Mark Wilczynski <mark@usvilaw.com>  
Bcc: maria@hodgetlawvi.com

Sat, Nov 13, 2021 at 10:25 AM

Good Morning, Counsel. I ask that you immediately deliver a copy of the court's temporary restraining order to you client, if you have not already done so, and advise them of their obligation to immediately rescind the invoices to NA members as ordered, by sending out written notices to every NA member stating the invoice to CU-1 dues is rescinded in accord with the court order. Please confirm that this has been done. Thank you. Maria Hodge

Sent from my iPad

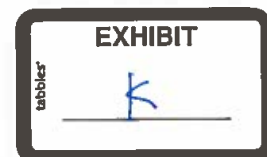
Begin forwarded message:

**From:** [noreply-ctrack@vicourts.org](mailto:noreply-ctrack@vicourts.org)  
**Date:** November 12, 2021 at 6:08:05 PM AST  
**To:** Undisclosed recipients;;  
**Subject:** Attached Documents ST-2018-CV-00768 - GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC. v. THE NEIGHBORHOOD ASSOCIATION, INC.

[Quoted text hidden]

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 **ST-2018-CV-00768-Documents.pdf**  
248K



A.000569

IN THE SUPERIOR COURT  
OF THE VIRGIN ISLANDS

**FILED**

November 18, 2021 05:07 PM  
ST-2018-CV-00768  
TAMARA CHARLES  
CLERK OF THE COURT

**LAW OFFICE OF W. MARK WILCZYNSKI, P.C.**

LOCATED AT PALM PASSAGE, SUITE C20-22  
P.O. BOX 1150, ST. THOMAS, VIRGIN ISLANDS 00804-1150  
TELEPHONE: (340) 774-4547 FACSIMILE: (340) 774-4759

Reply to: [Mark@usvilaw.com](mailto:Mark@usvilaw.com)

W. MARK WILCZYNSKI, Esq.

LAUREN N. WRIGHT, Esq.  
JUSTIN T. CROCKER, Esq.

November 4, 2021

BY EMAIL AT: [maria@hodgelawvi.com](mailto:maria@hodgelawvi.com)

Maria Hodge, Esq.  
Hodge & Hodge  
1340 Taarnberg  
St. Thomas, VI 00802

Re: **Response to November 13, 2021 Correspondence re  
Court Order**

Dear Maria:

In response to your email regarding the restraining order please be advised that I have transmitted your correspondence and attachments to my client. We are currently in the process of review. As you may know, the process of sending out the invoices took several weeks and most of the work was performed by third-party vendors. Having only received the court order late Friday afternoon, it is unrealistic to anticipate that the process could be reversed over the course of a weekend. I will have a further response for you before noon on Monday.

Sincerely,  
  
W. MARK WILCZYNSKI

WMW/lnw



A.000570

**FILED**

November 18, 2021 05:07 PM

ST-2018-CV-00768

TAMARA CHARLES  
CLERK OF THE COURT

mail

Maria Hodge <maria@hodgelawvi.com>

**Re: Response to your letter of last night**

1 message

Maria Hodge <maria@hodgelawvi.com>

Sun, Nov 14, 2021 at 9:51 AM

To: Mark Wilczynski <mark@usvilaw.com>

Cc: David Wentzel <dwentzel@wentzellaw.com>, Justin Crocker <justin@usvilaw.com>, Lauren Wright

<Lauren@usvilaw.com>, Carolyn <carolyn@usvilaw.com>

Bcc: salcut@comcast.net, eorsini6@gmail.com, mbetesh@gmail.com

Counsel, Your letter of last night indicating your client has not complied with the TRO and has no intention to do so for some unlimited time, is shocking and totally unacceptable. They base this upon the plainly pretextual excuse that they used a third party vendor to send out the original, improper invoices, and that process took weeks. The implication is that they intend to use that slow process to substitute for compliance with the court's order. Yet they are aware, as are you, that they are fully capable of preparing and distributing a written memo by email to all NA members, within hours of deciding to do so. That, however, is apparently only the case when it suits their strategy and not when the judge orders them to act. This is evident from the 11/5 email memo Great Bay sent to all NA members to object to NA's memo of the night before, which disputed the illegal assessments. Great Bay did that before noon on the day after seeing a copy of NA's memo to its members from the previous night, disputing these same assessments. It is undeniable that your client had and has the ability to comply with court's explicit order to rescind the improper invoices by a written notice to all NA members doing so. Their refusal to do that is an act of contempt of court. I ask that you advise them accordingly and promptly provide proof of their compliance. Maria Hodge

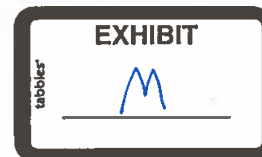
Sent from my iPad

On Nov 13, 2021, at 8:52 PM, Mark Wilczynski <mark@usvilaw.com> wrote:

Maria, attached is a response to your earlier email. Mark

W. MARK WILCZYNSKI, ESQUIRE  
Law Office of W. Mark Wilczynski, P.C.  
Palm Passage Suite C20-22 - P.O. Box 1150  
St. Thomas, U.S. Virgin Islands 00804  
Telephone: [\(340\) 774-4547](tel:3407744547)  
Fax No: [\(340\) 774-4759](tel:3407744759)  
[Mark@usvilaw.com](mailto:Mark@usvilaw.com)

<2021 11 13 Ltr to M. Hodge re Court Order.pdf>



A.000571

IN THE SUPERIOR COURT  
OF THE VIRGIN ISLANDS

**FILED**

November 18, 2021 05:07 PM  
ST-2018-CV-00768  
TAMARA CHARLES  
CLERK OF THE COURT

**LAW OFFICE OF W. MARK WILCZYNSKI, P.C.**

LOCATED AT PALM PASSAGE, SUITE C20-22  
P.O. BOX 1150, ST. THOMAS, VIRGIN ISLANDS 00804-1150  
TELEPHONE: (340) 774-4547 FACSIMILE: (340) 774-4759

Reply to: [Mark@usvitlaw.com](mailto:Mark@usvitlaw.com)

W. MARK WILCZYNSKI, Esq.

LAUREN N. WRIGHT, Esq.  
JUSTIN T. CROCKER, Esq.

November 14, 2021

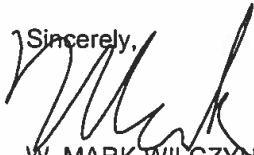
BY EMAIL at [maria@hodgelawvi.com](mailto:maria@hodgelawvi.com)

Maria Hodge, Esq.  
Hodge & Hodge  
1340 Taarnberg  
St. Thomas, VI 00802

Re: Temporary Restraining Order issued November 12, 2021

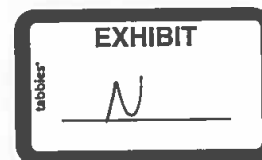
Dear Maria:

Enclosed with this letter please find the Unanimous Written Consent executed by the Board of Directors for GBCOA in compliance with the temporary restraining order issued Friday evening.

Sincerely,  
  
W. MARK WILCZYNSKI

Enclosure

WMW/lnw



A.000572

**FILED**

November 18, 2021 05:07 PM  
ST-2018-CV-00768  
TAMARA CHARLES  
CLERK OF THE COURT

**UNANIMOUS WRITTEN CONSENT  
IN LIEU OF A SPECIAL MEETING OF THE DIRECTORS OF  
GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.**

The undersigned, pursuant to Section 67b of Title 13 of the Virgin Islands Code, being all the Directors of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC. (hereinafter the "Owners Association"), do, this 14<sup>th</sup> day of November 2021, by this writing unanimously vote for, adopt, consent to, approve and ratify the following resolution and action in lieu of a special meeting of the directors of the Owners Association:

**WHEREAS** the Owners Association entered into a Servicing Agreement with Concord Servicing Corporation for the billing of CU-1 assessments to the Suite owners, and to receive payments of the assessments and credit them to the appropriate accounts of the obligors, and otherwise perform administrative and customer servicing with respect to the CU-1 assessments; and

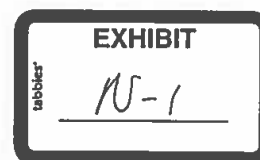
**WHEREAS**, on November 12, 2021, at 5:20 pm, the Superior Court of the Virgin Islands issued a temporary restraining order requiring the Owners Association to "rescind the invoices to NA members for dues and common charges for CU-1 [...] for a period of fourteen (14) days".

**IT IS HEREBY**

**RESOLVED**, in compliance with the order issued by the Superior Court in *Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.*, Civil No. ST-18-CV-00768, the Board of Directors agrees to notice Concord Servicing Corporation, Inc., 4150 N. Drinkwater Blvd., Suite 200 Scottsdale, AZ 85251, directing it to rescind the invoices issued on October 22, 2021, to Suites Owners for CU-1 assessments for a period ending on December 3, 2021, at 5:20 pm.

We direct that this Unanimous Written Consent be maintained in the books and records of the Owners Association and that the matters adopted herein have the same force and effect as if adopted at a duly called and noticed meeting of the directors.

The resolution adopted herein is executed and made effective as of the date and time recited above, although not necessarily signed by the directors on such date. Faxed



or scanned signatures shall have the same force and effect as original signatures and  
this Consent may be executed in counterparts.

DIRECTOR:

Dated: November 14, 2021

  
\_\_\_\_\_  
ABIGAIL CHUNG

DIRECTOR:

Dated: November \_\_\_\_, 2021

\_\_\_\_\_  
STEVEN REDAN

DIRECTOR:

Dated: November \_\_\_\_, 2021

\_\_\_\_\_  
THOMAS DOYLE

DIRECTOR:

Dated: November \_\_\_\_, 2021

\_\_\_\_\_  
MICHAEL GICK

DIRECTOR:

Dated: November \_\_\_\_, 2021

\_\_\_\_\_  
JAMES ARCHIE

or scanned signatures shall have the same force and effect as original signatures and  
this Consent may be executed in counterparts.

DIRECTOR:

Dated: November \_\_\_\_, 2021

\_\_\_\_\_  
**ABIGAIL CHUNG**

DIRECTOR:

Dated: November \_\_\_\_, 2021

\_\_\_\_\_  
**STEVEN REDAN**

DIRECTOR:

Dated: November \_\_\_\_, 2021

\_\_\_\_\_  
**THOMAS DOYLE**

DIRECTOR:

Dated: November 14, 2021

  
\_\_\_\_\_  
**MICHAEL GICK**

DIRECTOR:

Dated: November \_\_\_\_, 2021

\_\_\_\_\_  
**JAMES ARCHIE**

or scanned signatures shall have the same force and effect as original signatures and  
this Consent may be executed in counterparts.

DIRECTOR:

Dated: November \_\_, 2021

\_\_\_\_\_  
**ABIGAIL CHUNG**

DIRECTOR:

Dated: November \_\_, 2021

\_\_\_\_\_  
**STEVEN REDAN**

DIRECTOR:

Dated: November 14, 2021

  
\_\_\_\_\_  
**THOMAS DOYLE**

DIRECTOR:

Dated: November \_\_, 2021

\_\_\_\_\_  
**MICHAEL GICK**

DIRECTOR:

Dated: November \_\_, 2021

\_\_\_\_\_  
**JAMES ARCHIE**



or scanned signatures shall have the same force and effect as original signatures and  
this Consent may be executed in counterparts.

DIRECTOR:

Dated: November \_\_\_\_, 2021

\_\_\_\_\_  
**ABIGAIL CHUNG**

DIRECTOR:

Dated: November \_\_\_\_, 2021

\_\_\_\_\_  
**STEVEN REDAN**

DIRECTOR:

Dated: November \_\_\_\_, 2021

\_\_\_\_\_  
**THOMAS DOYLE**

DIRECTOR:

Dated: November \_\_\_\_, 2021

\_\_\_\_\_  
**MICHAEL GICK**

DIRECTOR:

Dated: November 14, 2021

  
\_\_\_\_\_  
**JAMES ARCHIE**

or scanned signatures shall have the same force and effect as original signatures and  
this Consent may be executed in counterparts.

DIRECTOR:

Dated: November \_\_, 2021

\_\_\_\_\_  
**ABIGAIL CHUNG**

DIRECTOR:

Dated: November 14, 2021

  
\_\_\_\_\_  
**STEVEN REDAN**

DIRECTOR:

Dated: November \_\_, 2021

\_\_\_\_\_  
**THOMAS DOYLE**

DIRECTOR:

Dated: November \_\_, 2021

\_\_\_\_\_  
**MICHAEL GICK**

DIRECTOR:

Dated: November \_\_, 2021

\_\_\_\_\_  
**JAMES ARCHIE**

**FILED**

November 18, 2021 05:07 PM  
ST-2018-CV-00768

TAMARA CHARLES  
CLERK OF THE COURT

mail

Maria Hodge <maria@hodgelawvi.com>

**Fwd: Message from GBCOA Board of Directors**

4 messages

Salvatore M. Cutrona, Sr. <salcut@comcast.net>  
To: Hodge Maria <maria@hodgelawvi.com>  
Cc: NEIGHBORHOOD ASSOCIATION <naboardstthomas@gmail.com>, "Betesh Marc Esq." <mbetesh@kbailease.com>, Orsini Enzo <eorsini6@gmail.com>

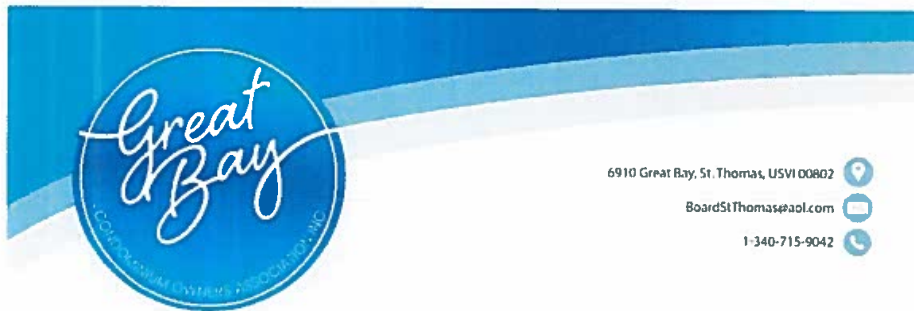
Tue, Nov 16, 2021 at 9:26 PM

All my best!

Salvatore M. Cutrona, Sr.  
Mobile: 917-543-8529  
Office: 610-796-8855  
Email: [salcut@comcast.net](mailto:salcut@comcast.net)

Begin forwarded message:

**From:** GBCOA <[boardstthomas@aol.com](mailto:boardstthomas@aol.com)>  
**Date:** November 16, 2021 at 7:09:52 PM EST  
**To:** [salcut@comcast.net](mailto:salcut@comcast.net)  
**Subject:** Message from GBCOA Board of Directors  
**Reply-To:** [boardstthomas@aol.com](mailto:boardstthomas@aol.com)



November 16, 2021

To: Members of the Neighborhood Association

Re: 14-DAY RESCISSION OF CU-1 ASSESSMENTS



As you know from an email you received from the Neighborhood Association Board of Directors on Saturday, November 13, 2021, the Superior Court of the USVI issued a temporary restraining order regarding the invoice you recently received for the past due maintenance fees on CU-1. The court issued the order at 5:20 PM on Friday, November 12, 2021. The GBCOA normally would have been given an opportunity to

A.000579

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November 18, 2021 05:07 PM  
ST-2018-CV-00768  
TAMARA CHARLES  
CLERK OF THE COURT

**THIRD AMENDMENT TO SUPPLEMENTARY DECLARATION RECORDED 12/9/2005  
[NA EX E]**

“...in accordance with the separate organization and governing documents of the Neighborhood Association, its members shall control the Neighborhood Association and shall be responsible for all costs and expenses related to the ownership, maintenance and operation of the Commercial Unit **owned by it...**”

NA Suites are subject to a “*lien in favor of the Neighborhood Association* to secure any unpaid assessments, fees or special charges imposed on members of the Neighborhood Association pursuant to the Bylaws of the [NA] which shall include but not be limited to interest, costs and attorneys fees incurred in the collection of a delinquent payment or enforcement of a lien. The Neighborhood Association lien shall be effective from and after recording a claim of lien in the Public Records...Such claims of lien shall be signed and verified by an officer of the Neighborhood Association, or by an authorized agent of the Neighborhood Association...”

**FOURTH AMENDMENT TO DECLARATION (CREATED NA) [NA EX F]**

“The Declarant or any Owner of a Commercial Unit [which is what NA was as owner of CU-1], may also convey a Commercial Unit, or any subdivision thereof in the case of the Declarant, to the Association for no or nominal consideration without the consent of any other Owner or the Association, and the Association shall be obligated to accept such conveyance.”

“Each Owner of a Commercial Unit shall be a Member of the Condominium Association, be subject to the Bylaws and Regulations, hold voting rights and have a Percentage Ownership allocation that is established in accordance with the Declaration, and share in the Common Expenses and the Common Surplus...”



“Each Owner of a Commercial Unit shall enjoy the same rights and benefits as other Owners and Members of the Condominium Association... Each Commercial Unit *and its Owner* shall further be subject to any particular covenants, conditions and restrictions that may be imposed thereon in connection with the creation and conveyance of such Commercial Unit.”

“Each **Commercial Unit** shall be subject to the Association’s *lien and foreclosure rights...*”

#### **VI CODE PROVISIONS**

Title 28 Virgin Islands Code Section 909 -- “[t]he common profits of the property shall be distributed among, and *the common expenses shall be charged to, the apartment owners according to the percentage of the undivided interest in the common areas and facilities.*” Those “undivided interests” are required to be the percentages expressed in the declaration. (Id at Section 905(a).

**FILED**

November 18, 2021 05:07 PM  
ST-2018-CV-00768  
TAMARA CHARLES  
CLERK OF THE COURT

mail

Maria Hodge <maria@hodgelawvi.com>

**Fwd: Communication from GBCOA Board regarding response to communication from NA's Board. ---STRICTLY CONFIDENTIAL - ATTORNEY CLIENT PRIVILEGE INFORMATION**

Begin forwarded message:

**From:** GBCOA <boardstthomas@aol.com>  
**Subject:** Communication from GBCOA Board regarding response to communication from NA's Board  
**Date:** November 5, 2021 at 11:52:30 AM EDT  
**To:** [salcut@comcast.net](mailto:salcut@comcast.net)  
**Reply-To:** [boardstthomas@aol.com](mailto:boardstthomas@aol.com)



November 5, 2021

TO: All Owners of Residence Interests in Heliconia and Gardenia Buildings:

**Re: Response to Communication from NA's Board – Will NA's Board of Directors Defend, Indemnify and Hold its Members Harmless?**

We write to briefly address the communication that was sent to you yesterday evening by the Neighborhood Association's Board of Directors.

First, we apologize that the Suite owners are faced with the unfortunate reality of the unpaid CU-1 assessments which the NA Board has allowed to accrue for the past five years. The NA Board has known about these unsatisfied liabilities all along. As long ago as November 2018 – after NA attempted to transfer the deed for CU-1 to the Members Association – the Management Company declared NA to be delinquent in payment of these dues. NA also received the bills for the CU-1 assessments in 2019, 2020 and 2021, but inexplicably failed to inform its members of these invoices or assess its members for the CU-1 dues. We made every effort to resolve the past due

**A.000582**

liability through negotiations; however, the NA Board's intransigence has frustrated these efforts at every turn.

Second, the issue of the Suite owners' personal liability for CU-1 assessments is not raised in either of the pending lawsuits between GBCOA and NA. Those lawsuits seek relief only against NA, not the Suite owners. We limited our claims in those lawsuits precisely because we preferred not to have to look to the Suite owners personally to satisfy the unpaid CU-1 dues. Unfortunately, due to the financial burden this unpaid liability places on the GBCOA membership at large, we can no longer permit the debt to go unsatisfied.

Third, we carefully set out the basis for the Suite owners' personal liability in the notice that accompanied the invoices. The NA Board's communication yesterday does not even attempt to explain how or why GBCOA's analysis of the governing condominium documents is incorrect. **And while the NA Board is advising you not to pay the invoices, we note the NA Board is not offering to hold you harmless or indemnify you against late fees, interest expense, attorney fees or any other expenses that may result from nonpayment of the invoices.** We would suggest that you consult your own attorney about the issue of the Suite owners' personal liability for CU-1 dues.

Finally, we want you to know that outside legal counsel for the owner of approximately 48% of the Suite Interests agrees with GBCOA's position that under the Declarations, the Suite owners are personally liable for all expenses relating to the maintenance, operation, management and repair of CU-1. In a letter written to NA's Board in September 2019, legal counsel for the multi-unit owner specifically advised:

- These Declarations are covenants running with the land and impose on the Suite owners the obligation to pay assessments to support CU-1, regardless of whether the [Neighborhood Association] or another entity owns it. In order to eliminate the liability of the Suite owners for payment of the costs associated with the operation, maintenance, management and repair of CU-1 or spread such costs to all of the owners of Great Bay Condominium, these documents must be amended. The [Neighborhood Association] cannot unilaterally amend these documents. Furthermore, the revised documents must be filed with various regulatory authorities.

For those of you who are interested, you can read the letter written to NA's Board by counsel for the multi-unit owner [HERE](#).

Sincerely,

**THE BOARD OF DIRECTORS**  
**GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.**  
6910 GREAT BAY, ST. THOMAS, USVI 00802.

President: Abbey Chung  
Vice-President: Michael Gick  
Treasurer: Thomas Doyle  
Secretary: Jimmy Archie  
Director: Steve Redan

**A.000583**

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS and ST. JOHN

\*\*\*\*\*

GREAT BAY CONDOMINIUM OWNERS ASSOCIATION	)	
	)	
Plaintiff	)	Case No. ST-18-CV-768
	)	
vs.	)	ACTION FOR DAMAGES
	)	
THE NEIGHBORHOOD ASSOCIATION, INC.	)	
	)	
Defendant.	)	
_____	)	

**THE NEIGHBORHOOD ASSOCIATION, INC. NOTICE OF FILING CORRECTED  
EXHIBIT O FOR HEARING ON PRELIMINARY INJUNCTION**

**COMES NOW**, Defendant, The Neighborhood Association, Inc., by and through undersigned counsel, Hodge & Hodge, by Maria Tankenson Hodge, Esq., and gives notice of the filing of the attached exhibit O for consideration at the hearing on November 19, 2021, on Defendant's Motion for Temporary Restraining Order and Preliminary Injunction, as requested by the Court. Defendant's submissions yesterday inadvertently included only the first page of this exhibit.

**Respectfully submitted,  
HODGE & HODGE**

Dated: November 19, 2021

By: /s/ Maria T. Hodge  
Maria Tankenson Hodge, Esq.  
1340 Taarneberg, St. Thomas, V.I. 00802  
Tel.: (340) 774-6845 || fax.: (340) 776-8900  
[maria@hodgelawvi.com](mailto:maria@hodgelawvi.com)  
*Attorney for Defendant, The Neighborhood  
Association, Inc.*

**CERTIFICATE OF SERVICE**

**A.000584**



I hereby certify that on this 19th day of November, 2021, I caused a true and exact copy of the foregoing to be served via the Court's electronic filing system:

W. Mark Wilczynski, Esq.  
Palm Passage, Suite C20-22 || P.O. Box 1150  
St. Thomas, US Virgin Islands, 00801  
*Attorney for Plaintiff, Great Bay Condominium Owners Association*  
[mark@usvilaw.com](mailto:mark@usvilaw.com)

David F. Wentzel, Esq.  
Wentzel Law Offices  
77 W. Washington St. Suite 2100  
Chicago, Ill. 60602  
Email: [dwentzel@wentzellaw.com](mailto:dwentzel@wentzellaw.com)  
Counsel for Plaintiff

/s/ Maria T. Hodge



Maria Hodge <maria@hodgelawvi.com>

---

**Fwd: Message from GBCOA Board of Directors**

4 messages

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**Salvatore M. Cutrona, Sr.** <salcut@comcast.net>

Tue, Nov 16, 2021 at 9:26 PM

To: Hodge Maria <maria@hodgelawvi.com>

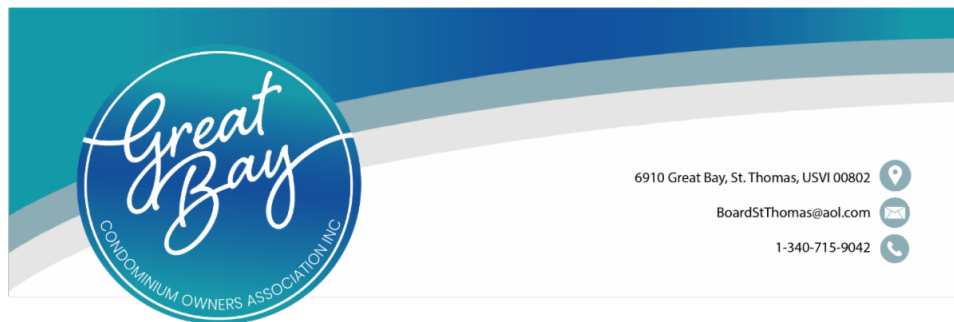
Cc: NEIGHBORHOOD ASSOCIATION <naboardstthomas@gmail.com>, "Betesh Marc Esq." <mbetesh@kbalease.com>, Orsini Enzo <eorsini6@gmail.com>

All my best!

Salvatore M. Cutrona, Sr.  
Mobile: 917-543-8529  
Office: 610-796-8855  
Email: [salcut@comcast.net](mailto:salcut@comcast.net)

Begin forwarded message:

**From:** GBCOA <[boardstthomas@aol.com](mailto:boardstthomas@aol.com)>  
**Date:** November 16, 2021 at 7:09:52 PM EST  
**To:** [salcut@comcast.net](mailto:salcut@comcast.net)  
**Subject:** Message from GBCOA Board of Directors  
**Reply-To:** [boardstthomas@aol.com](mailto:boardstthomas@aol.com)



November 16, 2021

To: Members of the Neighborhood Association

**Re: 14-DAY RESCISSION OF CU-1 ASSESSMENTS**

As you know from an email you received from the Neighborhood Association Board of Directors on Saturday, November 13, 2021, the Superior Court of the USVI issued a temporary restraining order regarding the invoice you recently received for the past due maintenance fees on CU-1. The court issued the order at 5:20 PM on Friday, November 12, 2021. The GBCOA normally would have been given an opportunity to

**A.000586**

respond to the court prior to issuance of the order; however, in this instance we were given 30 minutes notice which did not provide adequate time for a response.

The temporary restraining order was drafted by counsel for the Neighborhood Association and signed by the court without change. The order states:

IT IS HEREBY ORDERED that Great Bay, and all persons acting in concert with Great Bay, be and are hereby ordered to rescind the invoices to NA members for dues and common charges for CU-1, and from taking any action to impose a lien related thereto, or from taking any steps to Lock Out or otherwise impair, restrain or obstruct in any way the use by NA's members or their residences, condominiums, or the common areas at the Ritz-Carlton, or other membership rights and amenities, for a period of fourteen (14) days from the date of this order, commencing on the date and hour set forth below...

In compliance with this order we are rescinding the invoices for fourteen (14) days. The billing vendor received instructions Monday morning (yesterday) to stop accepting payments. Any payments tendered since then have not been processed. Further information will follow after a court hearing currently scheduled for Friday, November 19, 2021.

Sincerely,

**THE BOARD OF DIRECTORS  
GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.**  
6910 GREAT BAY, ST. THOMAS, USVI 00802.

President: Abbey Chung  
Vice-President: Michael Gick  
Treasurer: Thomas Doyle  
Secretary: Jimmy Archie  
Director: Steve Redan

GBCOA | 6910 Great Bay, St. Thomas, 00802 U.S. Virgin Islands

[Unsubscribe salcut@comcast.net](mailto:unsubscribe@salcut.comcast.net)

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Sent by [boardstthomas@aol.com](mailto:boardstthomas@aol.com) powered by



Try email marketing for free today!

---

**maria** <[maria@hodgelawvi.com](mailto:maria@hodgelawvi.com)> Wed, Nov 17, 2021 at 7:56 AM  
To: "Salvatore M. Cutrona, Sr." <[salcut@comcast.net](mailto:salcut@comcast.net)>  
Cc: NEIGHBORHOOD ASSOCIATION <[naboardstthomas@gmail.com](mailto:naboardstthomas@gmail.com)>, "Betesh Marc Esq." <[mbetesh@kbalease.com](mailto:mbetesh@kbalease.com)>, Orsini Enzo <[eorsini6@gmail.com](mailto:eorsini6@gmail.com)>

Thanks. interesting.

Sent from my Sprint Samsung Galaxy S8.  
[Quoted text hidden]

**A.000587**

---

**Salvatore M. Cutrona, Sr.** <salcut@comcast.net>

Wed, Nov 17, 2021 at 9:09 AM

To: Hodge Maria <maria@hodgelawvi.com>

Cc: "Betesh Marc Esq." <mbetesh@kbalease.com>, Orsini Enzo <eorsini6@gmail.com>, NEIGHBORHOOD ASSOCIATION <naboardstthomas@gmail.com>, Cutrona Sal <SALCUT@comcast.net>

...but no refunds? Just not processing new payments (for 14 days).

Rescind = revoke, cancel, repeal (a law, order or agreement). Did they "cancel" the invoices? Did they really "revoke" the invoices? Did they "repeal" the invoices?

"Rescinded" invoices and "stopped processing payments" as of Monday!

So, what about payments made from 10-20-21 to 11-15-21?

What happens to 27 days of payments?

Why couldn't they stop them on Saturday, 11-13-21?

It took them four days to communicate to NA Members!

And, they failed to state as we did in our memo to NA Members that they were notified by you prior to the filing at around 2 pm on 1-12-21 and the court issued the order at 5:20 pm - so they really had at least 3.5 hours to respond prior to the Judge's Order NOT 30 minutes!

All my best!

Salvatore M. Cutrona, Sr.

Mobile: 917-543-8529

Office: 610-796-8855

Email: [salcut@comcast.net](mailto:salcut@comcast.net)

On Nov 17, 2021, at 7:51 AM, maria <[maria@hodgelawvi.com](mailto:maria@hodgelawvi.com)> wrote:

[Quoted text hidden]

---

**Maria Hodge** <[maria@hodgelawvi.com](mailto:maria@hodgelawvi.com)>

Wed, Nov 17, 2021 at 9:17 AM

To: "Salvatore M. Cutrona, Sr." <salcut@comcast.net>

Cc: "Betesh Marc Esq." <mbetesh@kbalease.com>, Orsini Enzo <eorsini6@gmail.com>, NEIGHBORHOOD ASSOCIATION <naboardstthomas@gmail.com>, Cutrona Sal <SALCUT@comcast.net>

As we discussed, the court's order does not actually require refunds. Of course, they could have sent this notice Saturday, and they only sent it yesterday night because they understood the judge was upset with them. Certainly, the text gives us material to work with in the cross examination of Abbey. Anyway, we can address this notice at the hearing Friday, and whether to ask the court for additional relief.

[Quoted text hidden]

--

--

Maria Tankenson Hodge

1340 Taarneberg

St. Thomas, Virgin Islands 00802

Phone: 340-774-6845, Ext: 110

Fax: 340-714-1848

Our firm – formerly known as Hodge & Francois -- is now Hodge & Hodge. The partners of the firm are Maria Tankenson Hodge and Mark D. Hodge. Our address, phone and fax numbers remain the same, but we have new email addresses. Mine is [maria@hodgelawvi.com](mailto:maria@hodgelawvi.com). We look forward to continuing our work for our clients, as we have for decades.

**A.000588**

**CONFIDENTIALITY NOTICE:**

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opposed Plaintiff's motion to consolidate this case with another action involving the parties (ST-19-CV-650), that the issue in this case – ownership of CU-1 – was separate and distinct from issues relating to NA's liability for CU-1 assessments, which is the subject of ST-19-CV-650. See *Defendant's Opposition to Plaintiff's Motion for Consolidation*, p. 6. This action does not involve assessments; it involves title. The only action this Court could take to preserve the status quo would be to prevent the parties from transferring title to the unit pending resolution.

The ordering of affirmative relief through a TRO or preliminary injunction, in this case, relating to assessments that are not properly before this Court is not preservation of the status quo. As Defendant acknowledges, the "purpose of a preliminary injunction is to preserve the status quo between the parties pending a final determination on the merits of the suit." *Defendant's Opposition* at p. 3. The determination to be made on the merits in this case is Plaintiff's claim for cancellation of the deed and, based on such cancellation, to quiet title and for declaration that NA remains the owner of CU-1. As observed by Margaret Rolando, outside real estate counsel for Marriott – the entity that created NA and CU-1 and wrote the Declarations – liability for CU-1 assessments does not depend on who owns CU-1. While NA may dispute this, it has not pled any facts in this case or in ST-19-CV-650 that if proved would entitle it to the injunctive relief sought in its Motion for TRO and preliminary injunction.

II. Defendant Cannot Seek Injunctive Relief in a Motion in the Absence of Any Claim for Injunctive Relief in Its Pleading or Facts Showing Entitlement to Injunctive Relief

Defendant cites *Moore's Fed. Practice* 65.21[1] for the proposition that "[w]hile preliminary injunctive relief is usually requested in the complaint, it may also be

requested by motion.” *Opposition*, p. 2. Notably, Defendant fails to present the context of this bare statement or demonstrate its application by any court in any jurisdiction. Glaringly absent is any citation to authority for the proposition that a party who fails to assert any claim for affirmative relief in its pleading or to allege any facts in its pleading showing entitlement to an injunction may nonetheless obtain such relief through a motion. As courts throughout the United States unwaveringly and universally hold, when a party seeks injunctive relief based on claims or facts not pled in its complaint or a counterclaim, the court does not have authority to issue an injunction. See, e.g., *Devose v. Harrington*, 42 F.3d 470, 471 (8th Cir. 1994); *Pacific Radiation Oncology, LLC v. Queen’s Medical Center*, 810 F.3d 631, 636 (9th Cir. 2015) (collecting cases); *Colvin v. Caruso*, 605 F.3d 282, 299–300 (6th Cir.2010); *Little v. Jones*, 607 F.3d 1245, 1251 (10th Cir.2010); *Omega World Travel, Inc. v. Trans World Airlines*, 111 F.3d 14, 16 (4th Cir.1997); *Kaimowitz v. Orlando*, 122 F.3d 41, 43 (11th Cir.1997); *Stewart v. U.S. I.N.S.*, 762 F.2d 193, 198–99 (2nd Cir.1985).

The reason for this basic and universally accepted rule was explained by the Ninth Circuit in *Pacific Radiation Oncology*:

[T]here must be a relationship between the injury claimed in the motion for injunctive relief and the conduct asserted in the underlying complaint. ... The relationship between the preliminary injunction and the underlying complaint is sufficiently strong where the preliminary injunction would grant “relief of the same character as that which may be granted finally.” *De Beers Consol. Mines*, 325 U.S. at 220, 65 S. Ct. 1130. Absent that relationship or nexus, the district court lacks authority to grant the relief requested.

810 F.3d at 636; see also *id* (“Though new assertions of misconduct might support additional claims against a defendant, they do not support preliminary



injunctions entirely unrelated to the conduct asserted in the underlying complaint.”)

In this case, it is self-evident that NA's motion for TRO and preliminary injunction has nothing to do with preserving the Court's decision-making power over the merits of Plaintiff's claims asserted in the Complaint. The Court's ruling on the merits of Plaintiffs' claims for cancellation of the deed to CU-1 will not in any way resolve the unrelated question of whether Defendant's members are obligated under the Declarations to pay all expenses relating to CU-1 regardless of whether NA or another entity owns it. Consequently, the relief sought in NA's motion for TRO and preliminary injunction is not “relief of the same character as that which may be granted finally.” NA **has no claim for relief** in this case, period. Like the plaintiffs in *Devos* and *Pacific Radiation Oncology*, NA was required either to seek leave to amend its pleading in this case or to file a separate action asserting the claims and seeking the relief specified in its motion for TRO and preliminary injunction. *Devos*, 42 F.3d at 471; *Pacific Radiation Oncology*, 810 F.3d at 636. Defendant's failure to do so and instead filing its motion before this Court in the total absence of any underlying claim whatsoever smacks of pure “judge shopping.”

Defendant's citation to *Caribbean Healthways* is equally unavailing. In that case, both party's pleadings specifically asserted claims for injunctive relief:

Appellants Caribbean Healthways, Inc. and Hubert King ... sued the Appellees ... seeking a declaratory judgment, **injunctive relief**, and damages based on the Jameses' use and interference with the right of way. ... The Jameses filed a counterclaim, **seeking an injunction** to prevent the parking of trailers in the shared right of way.

55 V.I. at 692 (emphasis supplied). Defendant simply fails to provide any judicial authority whatsoever supporting its argument that this Court may grant the injunctive

relief Defendant seeks in the complete absence of any pleading asserting a claim for such relief or alleging facts showing entitlement to such relief. The Court has no such authority.

III. Statements made by Legal Counsel for NA's Most Significant Member Are Relevant and Probative

While Defendant is correct that the opinions expressed by Margaret Rolando are not controlling of any issue, they are relevant and highly probative to show that the Court's final ruling on the merits in this case will not resolve the separate and unrelated question of whether Defendant's members are obligated to pay all expenses relating to CU-1 regardless of whether NA or GBCOA owns it. NA's argument that the liability for CU-1 expenses is determined by who owns the asset is merely that – argument. As demonstrated, as a matter of law, in the absence of any pleading seeking injunctive relief or declaratory relief as to this issue – or at a minimum a pleading alleging facts demonstrating entitlement to such injunctive relief – this Court simply “lacks authority to grant the relief requested.” *Pacific Radiation Oncology*, 810 F.3d at 636 (collecting cases).

IV. There Is No Evidence of Any Explicit or Imminent Threat of Lockout or Imposition of a Lien or Other Irreparable Harm

Defendant asserts that Plaintiff threatened Defendant's members with “lockout” if the assessments that are the subject of its motion for TRO and preliminary injunction were not paid. This assertion is unsupported by any evidence. The only evidence Defendant proffers to establish this essential element of its request for injunctive relief (which as demonstrated is not even properly before the Court) is a letter sent by Marriott, the managing agent for both Defendant and Plaintiff, pertaining to

assessments unrelated to those that are the subject of Defendant's motion. The letter references the general policy that members who knowingly fail to pay the normal annual assessments subject themselves to the sanction expressly provided for in the Declarations governing the Great Bay Condominium. Defendant's bare assertion the letter pertains to the CU-1 assessments that are the subject of its motion for TRO and preliminary injunction does not make it so. Moreover, Defendant cites no authority whatsoever to support the proposition that enforcement of the provisions in the Condominium's governing Declarations can somehow be deemed "irreparable harm." This argument, on its face, is patently erroneous.

V. Irreparable harm to Plaintiff is not fictional.

Defendant claims the only harm to Plaintiff from a TRO or preliminary injunction is "embarrassment" of having to comply with the Court's Order. This assertion is not only unsupported by any evidence, it ignores the grossly overreaching and indeed slanderous language of the TRO order that Defendant itself drafted and presented to the Court for signature. As demonstrated, Defendant's filing of a motion seeking injunctive relief had no legal basis whatsoever. To go even farther and include language couched as a "finding" by the Court that Plaintiff was the entity who acted "illegally" by exercising the power expressly and exclusively granted to it in the Declarations was unquestionably improper and abusive of the Court's authority.

Moreover, Defendant fails to refute the authority cited in Plaintiff's motion to dissolve the TRO holding that damage to one's reputation and interference with one's lawful right to manage a business constitutes irreparable harm – in contrast to the purely monetary nature of the supposed "harm" to NA's members from having to comply

with the express requirement of the Declarations that all members must pay assessments when due regardless of any pending dispute.

VI. The Granting of Injunctive Relief Without Requiring a Bond is an Abuse of Discretion

The threat of this restraining order and further injunctive relief sought is that NA's members will refuse to pay assessments or request refunds if paid until some unidentified and unknowable time in the future, after a pleading properly raising the claim for injunctive relief is filed and after the Court to whom that pleading is properly assigned issues a final ruling. Given that this case, which is much narrower in scope, has been pending for three years and still is not ripe for determination of the narrower issues, the prolonged delay in collection of \$900,000 in CU-1 assessments (which will increase to \$1.2 million in a mere two months) will cause substantial financial harm to GBCOA. Plaintiff will then have to take substantial steps to, once again, assess the members and collect fees due and owing.

The very real threat of such harm is the very reason for the unconditional requirement in V.I.R.Civ.P. 65(c) that a court issuing a TRO or preliminary injunction may do so only on payment of a bond sufficient to compensate the nonmoving party for all harm and damages occasioned by the wrongful imposition of such relief. Defendant fails to cite any authority whatsoever to support its bare assertion that the Court has "discretion" to refuse a bond. Indeed, the controlling authorities cited in Plaintiff's motion to dissolve the TRO expressly and clearly mandate the exact opposite conclusion. An appropriate security in this case is an amount equal to the outstanding assessments, plus interest.

Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.  
Case No. ST-18-CV-768  
Plaintiff's Reply in Support of Motion to Dissolve Temporary Restraining Order

**WHEREFORE**, Plaintiff respectfully requests that this Court dissolve its previously entered Temporary Restraining Order and deny any preliminary injunction or permanent injunctive relief under Defendant's motion for TRO and preliminary injunction, or otherwise.

Respectfully submitted,

DATED: November 19, 2021

/s/ W. MARK WILCZYNSKI  
**W. MARK WILCZYNSKI, ESQUIRE**  
Law Office of W. Mark Wilczynski, P.C.  
*Counsel for Plaintiff:*  
**GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.**  
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V.I. Bar No. 515

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that this document complies with the page and word limitation set forth in V.I.R.Civ.P. 6-1(e).

**I HEREBY CERTIFY** that on this 19<sup>th</sup> day of November, 2021, I caused a true and exact copy of the foregoing **PLAINTIFF'S MOTION IN SUPPORT OF MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER** to be filed with the Superior Court's C-Track E-Filing system which will send notice to:

MARIA T. HODGE, ESQ.  
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***Counsel for Defendant***

By: /s/ W. MARK WILCZYNSKI

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<b>Court</b>	<b>Case Number</b>	<b>Filing Type(s)</b>	<b>Documents</b>	<b>Fees</b>
Superior Court of the Virgin Islands	ST-2018-CV-00768	Response - Reply	1	\$ 0.00
<u>Total</u>				<u>\$ 0.00</u>

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.,	)	
	)	
Plaintiff,	)	CASE NO.
vs.	)	ST-2018-CV-00768
	)	
THE NEIGHBORHOOD ASSOCIATION, INC.,	)	Action for
	)	Declaratory
Defendant.	)	Judgement

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Transcript

November 19, 2021

BEFORE: HONORABLE RENEE GUMBS-CARTY  
Judge Presiding

APPEARANCES: W. MARK WILCZYNSKI, ESQ.  
DAVID WENTZEL, ESQ., Pro Hac Vice  
Law Office of W. Mark Wilczynski  
Palm Passage, Ste. C-20-22  
St. Thomas, Virgin Islands 00802  
(For the Plaintiff)

MARIA TANKENSON HODGE, ESQ.  
Hodge & Hodge  
1340 Taarneberg  
St. Thomas, Virgin Islands 00802  
(For the Defendant)

I N D E X

<u>Defendant's Witnesses</u>	<u>D</u>	<u>C</u>	<u>RD</u>
Salvatore Cutrona	14		



1 (The following proceedings were  
2 held virtually in open court  
3 via the Zoom platform)

4 THE CLERK: Criminal jury  
5 calendar for Friday, November 19, 2021. Great  
6 Bay Condominium Owners association, Inc. versus  
7 Neighborhood Association, Inc.

8 ATTORNEY WILCZYNSKI: Good  
9 morning, Your Honor, Mark Wilczynski on behalf  
10 of the plaintiffs, Great Bay Condominium Owners  
11 Association along with my co-counsel pro hac  
12 vice Attorney David Wentzel. In addition, I  
13 have present my associate Justin Crocker who's  
14 here only to observe and to assist me with any  
15 technical issues that I might have with the  
16 technological part of this presentation.

17 Also, I would like to introduce  
18 my corporate representative, Mr. Thomas Doyle.

19 THE COURT: Sorry, Thomas  
20 Doyle?

21 ATTORNEY WILCZYNSKI: Doyle,  
22 D-o-y-l-e.

23 THE COURT: Thank you.

24 ATTORNEY HODGE: Good morning,  
25 Your Honor. Maria Tankenson Hodge for the

1 Defendant the Neighborhood Association, Inc.  
2 and with me is Salvatore Cutrona who is my  
3 client representative and president of  
4 Neighborhood Association, Inc.

5 THE COURT: Very well, good  
6 morning.

7 MR. CUTRONA: Good morning,  
8 Your Honor.

9 THE COURT: I'm sorry, he's the  
10 president of NA?

11 ATTORNEY HODGE: Yes, Judge.

12 THE COURT: Okay, thank you  
13 all. Are there any preliminary issues that we  
14 need to address before we start the hearing? I  
15 received a lot of filings. So, I may have  
16 everything I believe. I received the reply  
17 from Great Bay this morning. Did you receive  
18 the reply, Attorney Hodge?

19 ATTORNEY HODGE: Yes, I  
20 received it this morning as well, Your Honor.

21 THE COURT: Okay, very well.

22 ATTORNEY WILCZYNSKI: Your  
23 Honor, we have a preliminary matter we would  
24 like to discuss prior to the hearing.

25 THE COURT: Okay.

1                   ATTORNEY HODGE: You obviously  
2 received our memorandum and opposition to the  
3 motion to dissolve to which Great Bay replied.  
4 We filed that yesterday about one o'clock.

5                   THE COURT: Oh, yes. Yes, I  
6 received that.

7                   ATTORNEY HODGE: And also we  
8 filed exhibits yesterday afternoon.

9                   THE COURT: I thought I just  
10 saw one, Exhibit O?

11                   ATTORNEY HODGE: That was the  
12 was the fill in blank at the end. I filed all  
13 of the exhibits that were not attached to the  
14 summary judgment motion. If you need me to  
15 re-file time them, I'll have to send them  
16 again.

17                   THE COURT: Just give me one  
18 second to check. Okay, Alexis Bauman is my law  
19 clerk. She's on the screen just for everyone's  
20 knowledge.

21                   Okay, this is the stack. Okay,  
22 I have it.

23                   ATTORNEY HODGE: You do have  
24 it, very well.

25                   THE COURT: All right, Attorney

1 Wilczynski?

2 ATTORNEY WILCZYNSKI: Yes, good  
3 morning, Your Honor. As a preliminary matter,  
4 my client would request that some or all of our  
5 motion to dissolve the TRO be heard first.  
6 Specifically those issues related to the  
7 jurisdiction and the propriety of the Court  
8 being the one to decide these issues, as well  
9 as the issue related to the bond.

10 The reason why I would make  
11 this request is because there's no testimony  
12 required for those. Those are purely legal  
13 matters, and they don't require us to be here  
14 for four hours to find out who did what in  
15 1947. That's my request on behalf of my  
16 client, Your Honor.

17 ATTORNEY HODGE: Your Honor, I  
18 would certainly disagree that the issue of the  
19 bond is not a matter that requires evidence.  
20 We've addressed that in our memorandum. We  
21 think it clearly is a matter that would require  
22 evidence as to whether or not if any of the  
23 bond should be required.

24 It includes consideration of  
25 factors such as the cost -- the minimal cost to

1 lead Great Bay to comply with the order and the  
2 insignificant risk of any harm. That would be  
3 a matter of evidence. On the issue of the  
4 Court's jurisdiction, I have no objection to  
5 addressing that with the Court in argument.

6 We've addressed it in our  
7 memorandum to you as Great Bay and I'm further  
8 prepared to speak to that now if Your Honor  
9 prefers that before we call our witnesses.

10 THE COURT: Yes, you may  
11 proceed. Attorney Hodge, you may proceed on  
12 that issue.

13 ATTORNEY HODGE: Very well, the  
14 thrust of the position of Great Bay is the  
15 Court can consider or grant a temporary  
16 restraining order or a preliminary injunction  
17 to protect the status quo on the assessment to  
18 the NA members they did not specifically  
19 address that in their complaint, but the  
20 reality is if the complaint specifically asks  
21 the Court to adjudicate who is the owner of  
22 this unit.

23 Count five of the complaint is  
24 for declaratory judgment that Great Bay doesn't  
25 own unit C U-1 and that Neighborhood

1 Association does own C-U1 and the issue of who  
2 would be responsible for common charges for  
3 that unit is entirely and completely derivative  
4 of the answer to the question of who owns it.  
5 So, it doesn't have to be a separate claim or  
6 counterclaim before you for you to be entitled  
7 to address that and protect against a TRO or  
8 preliminary injunction.

9 In the memo that -- the most  
10 recent memo that Great Bay filed about this,  
11 they cited some cases which they suggest would  
12 tie your hands on that, but the heart of those  
13 cases basically --

14 THE COURT: Out of the 9th  
15 Circuit. I think the cases, and the one case  
16 came out of the 9th Circuit which is totally  
17 irrelevant.

18 ATTORNEY HODGE: There's  
19 nothing from our certificate that's cited,  
20 Judge. But, even from our circuits that are  
21 cited, the Court would notice that the language  
22 in the restraining order should have a time  
23 relationship or a nexus to the claims before  
24 you.

25 And in this case the claim

1 before you is to decide who owns this unit.  
2 And under Virgin Islands statutory law the  
3 answer to the question who owns the unit is  
4 also the answer to the question of who owes  
5 common charges for the unit.

6 It's completely derivative and  
7 it's completely inherent in the relief that  
8 they've asked for. So, to suggest that the  
9 Court couldn't protect the status quo about  
10 common charges is essentially equivalent to  
11 saying you can decide who owns it, but you  
12 can't decide who uses it. You can't decide who  
13 can come in and paint it or who has the  
14 obligation to maintain it.

15 They're totally related and  
16 dependent upon one another and we submit to the  
17 Court that you clearly have jurisdiction to  
18 protect the status quo as we would have with  
19 the TRO and as we would ask you to with the  
20 preliminary injunction.

21 THE COURT: Attorney  
22 Wilczynski?

23 ATTORNEY WILCZYNSKI:  
24 Your Honor -- yes, Your Honor. Thank you.  
25 Attorney Wenzel will reply in detail on it.

1 There's just one thing that Attorney Hodge  
2 brought up that I thought might be necessary to  
3 respond to before he does the presentation, and  
4 that's not what was said in relation to our  
5 motion to consolidate. The motion to  
6 consolidate the issue of the assessments.

7 THE COURT: The motion to  
8 dissolve?

9 ATTORNEY WILCZYNSKI: No, Your  
10 Honor.

11 THE COURT: Oh, you mean the  
12 other case which I've already denied?

13 ATTORNEY WILCZYNSKI: Yes,  
14 that's right, Your Honor, and in the course of  
15 issuing that denial you made it very clear that  
16 assessments are not part of this case. And  
17 because assessments were the actual reason why  
18 that other case was brought.

19 In addition, Your Honor, I'm  
20 not sure I understand how Attorney Hodge comes  
21 to her conclusion that this case, that the  
22 assessments are part of what's in this case.  
23 Is there any part of an order that this court  
24 can give that would automatically provide for  
25 the payment of assessments.



1                   No, I didn't ask for that. The  
2                   only thing I asked for is the Court agreed that  
3                   the CU-1 should remain in the ownership of  
4                   Neighborhood Association. If I lose and GBCOA  
5                   becomes the owner, is this Court going to issue  
6                   an order that says that not only is GBCOA the  
7                   owner, but somebody has to pay those bills  
8                   right away.

9                   That's not what this case is  
10                  about this case. This case is about the  
11                  ownership of the units, not the assessment.  
12                  That's why we filed these two cases.

13                  THE COURT: Yes. So, therefore  
14                  it has not been decided as yet. The Court has  
15                  not made a ruling on that issue as yet. So, at  
16                  the same time, irrespective of the fact that a  
17                  ruling has not been made, GB decided to go  
18                  ahead and issue these invoices to force the  
19                  defendant in this matter to pay on the  
20                  assessments from 2017 you.

21                  ATTORNEY WILCZYNSKI: I wish  
22                  that was so, Your Honor, but that is not what  
23                  we did. The Neighborhood Association has not  
24                  received an assessment. It never received an  
25                  assessment. The Neighborhood Association has

1 not been aggrieved in any way shape or form in  
2 relation to any actions that we took for the  
3 invoicing. If the invoicing for the individual  
4 owners of the individuals units who have paid  
5 these assessments over the last 15 years  
6 without any problems.

7 They are the source of the  
8 funds where the Neighborhood Association  
9 collected and then passed on to Great Bay  
10 Association, the condominium owner's  
11 association over the last the 15 years, and  
12 that is what we he did. NA doesn't even have  
13 any standing to bring it.

14 We didn't do any assessment  
15 against them, but if there was somewhere in the  
16 pleadings that say that an assessment was made  
17 against the Neighborhood Association  
18 themselves, I'll eat my words, but perhaps  
19 Attorney Wentzel will be more able to --

20 THE COURT: Let me just say I'm  
21 denying your request at this time, Attorney  
22 Wilczynski. The Court does have jurisdiction  
23 to hear this matter and I understand your  
24 argument that you just placed on the record,  
25 and I understand what you have here in your

1 opposition to the TRO. And so we will move  
2 forward and have this injunctive hearing right  
3 now.

4 I'm going to start with the  
5 plaintiff -- I'm sorry, with the defendant  
6 since it's their motion. So, I'm going to  
7 start with the testimony from the defendants in  
8 this matter.

9 ATTORNEY WILCZYNSKI: Thank  
10 you, Your Honor.

11 ATTORNEY HODGE: Thank you,  
12 Your Honor. So, we would call Salvatore  
13 Cutrona who is present this morning and I think  
14 the Court should be able to see him on the  
15 screen.

16 THE COURT: Yes, I can.  
17 There's no one else in the waiting room. Are  
18 there any other witnesses you wish to call from  
19 either side?

20 ATTORNEY WENTZEL: Yes, Your  
21 Honor. Well, we will have Mr. Doyle who's the  
22 treasurer of Great Bay Condo Association is  
23 going to testify and we'll call and make  
24 available Abigail Chung, the president of Great  
25 Bay Condominium Owners Association who

1 submitted an affidavit on the record.

2 THE COURT: I have the  
3 affidavit. I've read the affidavit. Thank  
4 you. Thank you.

5 ATTORNEY HODGE: So,  
6 Mr. Cutrona is our only witness this morning,  
7 Your Honor.

8 THE COURT: Okay, very well.  
9 Mr. Cutrona, good morning. Please raise your  
10 right hand to be sworn.

11 **SALVATORE CUTRONA,**  
12 **after having been first duly sworn by the**  
13 **clerk, testified as follows:**

14 **DIRECT EXAMINATION**

15 **BY ATTORNEY HODGE:**

16 Q Good morning, Mr. Cutrona. Could  
17 you state your full name for the record?

18 A My name is Salvatore Michael  
19 Cutrona, Sr.

20 Q And Mr. Cutrona, where do you  
21 reside?

22 A I reside in Milton, Pennsylvania.

23 Q And are you connected in any way  
24 with the Neighborhood Association, Inc.?

25 A I am the president of the

1 Neighborhood Association, Inc.

2 Q And could you just describe briefly  
3 for the Court what the Neighborhood  
4 Association, Inc. is?

5 A The Neighborhood Association is a  
6 not for profit corporation under U.S.V.I. law  
7 that was established by an amendment to the  
8 declarations for the sole purpose of  
9 representing the suite owners who have -- suite  
10 interest owners who have an interest in the  
11 commercial unit one. We refer to it as CU-1.

12 Q How many members are there in your  
13 non-profit corporation?

14 A There have 288 suite interests,  
15 fractional interest I might say members of the  
16 Neighborhood Association, Inc. That represents  
17 24 residences called suites and there are 12  
18 deeded fractional interests per suite  
19 residences making up the 288 suite interest  
20 where members in the Neighborhood Association.

21 Q So, deeded fractional interest, does  
22 that suggest that these are not people that  
23 don't necessarily own the condominium in a  
24 traditional sense, but they own the right to  
25 use it for a certain period of time each year?

1           A     That's correct.  These are, Your  
2 Honor, not full ownership condominiums 365 days  
3 a year full ownership.  They're deeded  
4 fractional interests that provide 21 days on a  
5 rotating basis to the condominium that the  
6 interest is aligned with or it owns, and every  
7 year that rotating calendar changes every week  
8 until it recycles and comes back around.

9           Q     I'm sorry.  I don't mean to  
10 interrupt you.  So, each one of those interests  
11 you described represents one of those three  
12 week intervals; is that correct?

13          A     That is correct.

14          Q     Do you have any connection with the  
15 plaintiff Great Bay Condominium Association,  
16 Inc.?

17          A     We -- the Neighborhood Association  
18 in our role with CU-1.  CU-1 is a commercial  
19 unit condominium interest as a member of the  
20 Great Bay Association.  Me individually as a  
21 suite interest owner, I'm a member as well of  
22 the Great Bay Association through that  
23 ownership interest.

24          Q     And do you know how many members  
25 there are in the Great Bay Condominium

1 Association?

2           A     Yes. I do having been president of  
3 that association for a number of years, there  
4 are 80 two and three bedrooms deeded fractional  
5 interests in the Great Bay Condominium  
6 Association. They too have 12 deeded  
7 fractional interests per residence or condo,  
8 and that is 960 residential two and three  
9 bedroom units.

10                         Then you have the commercial  
11 units that we discussed and defined, and then  
12 we have the 24 suite interests that represent  
13 299 interests.

14           Q     So, all of you together --

15           A     1,260.

16           Q     So, 1,260 members in Great Bay?

17           A     That's correct.

18           Q     Also including the 288 members of  
19 the Neighborhood Association?

20           A     That's correct.

21           Q     Also including the commercial units?

22           A     That's correct.

23           Q     Okay.

24                         THE COURT: So, I just need to  
25 clarify. So, there's 12 deeded fractional

1 interests, and they have a 21 day rotating  
2 basis cycle when they can use the unit.

3 THE WITNESS: That's correct.

4 THE COURT: So, if I multiply  
5 12 by 21 or 12 by 3 rather, I came up with two  
6 -- plus the 25, I came up with 276. How do I  
7 get to 288?

8 THE WITNESS: Let me go through  
9 it. On the two and three bedroom residence  
10 condos, there are 80 of those, Your Honor. So  
11 each of those 80 has 12 interests which is 960  
12 deeded fractional interests representing what  
13 we call the residences.

14 I'm sorry if that wasn't clear  
15 before. You have the commercial units with the  
16 12 interests aligned, and then you have the 24  
17 suites which at 12 deeded fractional interests  
18 per unit is 288. So, the 960, the 12, and the  
19 288 is a total of 1,260 deeded fractional  
20 interest in the Great Bay Condominium  
21 Association.

22 **BY ATTORNEY HODGE:**

23 Q So, but on the NA part of that list,  
24 I think the Court is asking. It's 24 units  
25 multiplied by 12. Is that 12 months or what



1 does the 12 represent?

2           A     The way the declarations and the  
3 developers define the condominiums is that each  
4 residential unit would have 12 deeded  
5 fractional interests. So, you take the 24  
6 suite condos which are individual times 12 is  
7 the 288 deeded fractional interest suites.

8           Q     So, Mr. Cutrona, the CU-1 commercial  
9 unit, would you just briefly describe that for  
10 the judge.

11           A     Your Honor, the CU-1 is the  
12 commercial unit. It is the top floor of the  
13 one of the buildings in the condominiums called  
14 the Gardenia building. Its purpose was to  
15 provide a food and beverage service operation  
16 for the suites owners because they have a  
17 smaller kitchen, kind of galley that doesn't  
18 provide for presentation. There's no dining  
19 room like a residential unit has. The kitchen  
20 is not large as it is.

21                     So, the developer came up with  
22 a concept similar to the hotel concierge floor  
23 level where you would go there for breakfast.  
24 You would have lunch, and they would have hors  
25 d'oeuvres and wine in the evening. It

1 basically --

2 Q I'm sorry. I don't mean to  
3 interrupt you. But, this unit was a  
4 particularly dedicated space on the top floor  
5 of one of these two buildings?

6 A That's correct.

7 Q And it was initially used only to  
8 serve the members of NA and not all of the  
9 Great Bay members; is that right?

10 A That's correct.

11 Q And did there come a time that there  
12 was a change in that use?

13 A Yes, there was. In a period of time  
14 in 2012 we commenced discussion as the  
15 Neighborhood Association with the Great Bay  
16 Association because the facility was coming up  
17 with a mandated refurbishment meaning the  
18 update of the design and furniture.

19 And prior to doing that we  
20 wanted to revisit strategically its use, and  
21 through those discussions, we entered into a  
22 mutual agreement that basically we would  
23 basically demolish the floor and actually build  
24 a restaurant, not just a commissary facility  
25 that long term would be able to serve all of

1 the Great Bay Association. All 1,260 versus  
2 288.

3 Q And I'm going to ask you to put  
4 aside the issue in the other case about the  
5 dispute about the outcome of the suits  
6 concerning those renovations and ask you to  
7 just tell us, did there come a time in your  
8 discussions with Great Bay where it was decided  
9 or agreed or under discussion that the Great  
10 Bay members would be allowed to use the unit as  
11 well and there would be a change in how it was  
12 managed?

13 A Absolutely. We opened the new  
14 renovated facility on December 13th of 2016  
15 and -- I'm sorry, 2013, and the agreement that  
16 we structured for the coming year of 2014 was  
17 that to provide access for the remaining 960  
18 residences of the two and three bedroom  
19 residences.

20 Great Bay agreed to waive any  
21 commercial assessments to the Neighborhood  
22 Association which is build annually so that we  
23 would accommodate that. So, the way we did it  
24 just from a legal perspective is they billed he  
25 build us the assessment, then they paid us back

1 for the access rights for the residential two  
2 three bedroom residential owners to use it.

3 Q When you say they billed us --  
4 before you go on, when you say they billed us,  
5 you mean they billed the Neighborhood  
6 Association, Inc. or they billed you  
7 individually as members?

8 A No, all assessments for CU-1 were  
9 billed by Great Bay, not the Ritz Carlton  
10 management company to the Neighborhood  
11 Association because the Neighborhood  
12 Association was charged with the management of  
13 the CU-1 which included paying the common  
14 charge and the operator and the electric, and  
15 the HVAC, and then we had our assessments  
16 -- NA -- that we billed to the suite owners.

17 Q So, Great Bay was assessing you a  
18 common charge for -- you being the Neighborhood  
19 Association, and then when you arrived at this  
20 new agreement they began -- correct me, they  
21 began an arrangement where they waived or  
22 rebated that to you?

23 A They still bill -- they still bill  
24 their CU-1 assessments as they've always did.  
25 They then sent back to us what they called an

1 access fee which was equivalent to the amount  
2 we paid for the CU-1 assessment.

3 Q And again, by we you mean the  
4 Neighborhood Association?

5 A By we I mean the Neighborhood  
6 Association, correct.

7 Q Now, did there come a time when you  
8 were discussing with Great Bay actually giving  
9 them a deed to the commercial unit?

10 A So, as we started this discussion,  
11 we did that process for 100% of the fee in  
12 2014. In 2015 and '16 they kind of pulled back  
13 and said we're only going to pay you an access  
14 fee of half of the CU-1 assessment and that was  
15 not what we had talked about and not what we  
16 agreed to, but given the financial stability of  
17 the operation that NA was responsible for, we  
18 agreed for that for two years.

19 Then for the club year 2017, we  
20 had agreed, and this was verbal, Your Honor,  
21 that we would transfer the deed to CU-1  
22 effective December 30th of 2016. That was the  
23 end of the fiscal year for the Neighborhood  
24 Association, and that was to be our last year  
25 we would have certified financial files,

1 independent public accounting firm because  
2 after that we wouldn't have operations.

3 THE COURT: So, both of these  
4 agreements were oral agreements? I understand  
5 what you said with respect to 2017. Was it the  
6 same for the half of the payments of the access  
7 fee for 2015 and 2016, the oral agreement?

8 THE WITNESS: That's a good  
9 point and I omitted it. We did have a written  
10 agreement between the Great Bay Association and  
11 NA for the waiver of the assessment and the  
12 creation of the access fee, and that was  
13 modified from the 100% CU-1 assessment to half  
14 for 2015 and '16 and is so documented, Your  
15 Honor.

16 THE COURT: Okay. All right.  
17 Thank you.

18 **BY ATTORNEY HODGE:**

19 Q So, you were contemplating  
20 delivering a deed to Great Bay that would  
21 transfer title to this unit to them in the year  
22 2017?

23 A No, 12/30/16 was the effective date.  
24 We agreed to allow Great Bay's board to  
25 understand how to manage a food and beverage

1 operation. They agreed, and we agreed to  
2 create a joint committee of the boards, and  
3 Mr. Doyle who's present here today was one of  
4 the representatives who attended those meetings  
5 and had a full vote along with another member  
6 of the board, Mr. Geck I believe, and then we  
7 had two members of our board that were part of  
8 that committee, and to ease the impact on the  
9 operator for this change of management, so to  
10 speak, we agreed that we would co-manage that  
11 and we would support that.

12 Throughout 2017 while we did  
13 that, and we have minutes that documents every  
14 one of these meetings up until the hurricanes  
15 when, of course, we didn't have meetings.

16 Q So, what you're referring to is  
17 Great Bay was co-managing the operation of that  
18 commercial unit?

19 A Yes, they were.

20 Q Okay.

21 A And there's documented minutes to  
22 that effect.

23 Q Okay, and did something happen in  
24 2017 that had some impact on your arrangement  
25 with Great Bay about your plans to transfer --

1           A     Not at all. They were very  
2     supportive. They were true partners, and we  
3     began, and Mr. Doyle was the leader to get the  
4     agreement for the deed transfer put together,  
5     hammering out the legality.

6                     So, we entered into the process  
7     besides managing the commercial unit to put  
8     what's called Your Honor, a deed transfer  
9     agreement. That agreement that with approval  
10    by both boards with changes by our board as  
11    well as theirs, and we got a notification via  
12    email from Ms. Abigail Chung who was the other  
13    negotiator on the transfer agreement saying it  
14    was accepted.

15                    We then made the changes we  
16    agreed to. I executed it, and sent it over to  
17    her and then we got an email back saying that  
18    we're renegeing on the agreement. We want two  
19    things. One, we want you to turn over all the  
20    funds that the Neighborhood Association has  
21    under their purview and control as well a half  
22    a million dollars that was in escrow with the  
23    attorneys from a joint case that all the  
24    settlements were awarded to both of us.

25                    But, Great Bay, in the spirit



1 of helping us fund the renovations turned over  
2 to us. In some cases they were written into  
3 those settlement agreements just for a full  
4 amount, and in others the parties wanted it to  
5 go half and half and Mr. John Doyle, then  
6 president would endorse those checks over to  
7 the Neighborhood Association.

8 Q Mr. Cutrona, I'm going to ask you to  
9 just --

10 ATTORNEY WILCZYNSKI: Your  
11 Honor?

12 THE COURT: So, Attorney Hodge  
13 let's get to the specifics of the TRO, the  
14 invoices.

15 ATTORNEY WILCZYNSKI: And, Your  
16 Honor, may I just interject the objection just  
17 for purposes of the record, this is well  
18 outside the scope of the purposes of this  
19 hearing. In addition, this gentleman has  
20 testified about a number of documents that are  
21 not before this Court, a slew of documents and  
22 I wanted to register that objection to the  
23 Court if necessary.

24 THE COURT: Okay, your  
25 objection is noted.

1 **BY ATTORNEY HODGE:**

2 Q So, Mr. Cutrona, did there come a  
3 time that you actual delivered a deed for CU-1  
4 to Great Bay?

5 A Yes.

6 Q Do you remember what that was?

7 A It was somewhere in September of  
8 2017. It was in September of 2017.

9 Q So, you delivered a deed to them at  
10 that point?

11 A Yes.

12 Q And from that time to the present  
13 has NA received any invoices from Great Bay  
14 claiming that NA should pay the assessment of  
15 common charges?

16 A As we covered previously, the CU-1  
17 assessments for Great Bay to NA, I covered them  
18 for 2014, '15, and '16.

19 Q No, I'm talking about whether you  
20 got any notices from them demanding that you  
21 pay an assessment for a period after the deed  
22 was just delivered?

23 A After the deed was delivered --

24 Q Did you get any assessments from NA  
25 after the deed was delivered?

1           A     After the deed was delivered, we  
2     received invoices annually for the CU-1  
3     assessments.

4           Q     Again, when you say we, you are  
5     referring to --

6           A     NA.

7           Q     -- Neighborhood Association?

8           A     NA.

9           Q     Did you agree that those assessments  
10    were valid against NA?

11          A     No, we did not.

12          Q     Did you pay them?

13          A     No, we did not.

14          Q     Did you write objections to them?

15          A     No, we asked counsel for the  
16    Neighborhood Association to write a letter to  
17    them which we did, each invoice we received.  
18    We also called to the management company's  
19    attention who was doing the paperwork sending  
20    the GBCOA bill that the invoices really should  
21    come not to us, but to GBCOA because the title  
22    had been transferred.

23          Q     Now, did there come a time since you  
24    delivered the deed to Great Bay in 2017 that  
25    you individually received an invoice from Great

1 Bay demanding that you personally and other NA  
2 members pay the assessment for the commercial  
3 units?

4 A No, there was never a time that  
5 Great Bay --

6 Q Ever. I mean up to now. Up to  
7 today?zzzzzzzzz:

8 A Up to October 20th invoice there was  
9 never a time that NA suite owners or members  
10 individually were charged for the CU-1  
11 assessment?

12 Q What happened on October 20th of  
13 this year that was new or different about that?

14 A They issued a memo to the entire  
15 association including residences which then  
16 copied in a four page letter they sent with the  
17 invoices which went through U.S. mail to each  
18 suite interest owner charging them for the 2017  
19 through 2021 CU-1 assessments that they had  
20 previously tried to bill to NA including late  
21 fees and charges.

22 ATTORNEY HODGE: Your Honor,  
23 may we show the witness what has been marked as  
24 Defendant's Exhibit A. I'm not quite sure how  
25 we do this. I think he has a copy of it. I'm

1 not sure if everybody has a copy of it.

2 THE COURT: Yes. Okay, just  
3 one second, Mr. Cutrona, thank you. I'm going  
4 to enable you, Attorney Hodge to share your  
5 screen. That's as far as I know.

6 ATTORNEY HODGE: So, if  
7 everyone has the document, I don't need to put  
8 it up, but if you want me to I could try to put  
9 up a copy from my computer.

10 ATTORNEY WILCZYNSKI: Thank  
11 you, Judge. That would with be great.

12 THE COURT: And you said it's  
13 exhibit what.

14 ATTORNEY HODGE: Exhibit A like  
15 apple.

16 THE COURT: A, okay.

17 ATTORNEY HODGE: Do I need to  
18 click share screen on mines as well to do this?

19 THE COURT: I did it already.  
20 I don't know what else needs to be done on your  
21 side. Does anyone know?

22 ATTORNEY WILCZYNSKI: Maria,  
23 you have to click share screen.

24 ATTORNEY HODGE: Okay, let me  
25 try.

1 ATTORNEY WILCZYNSKI: There's a  
2 lag.

3  
4 ATTORNEY HODGE: Can people see  
5 the exhibit?

6 ATTORNEY WILCZYNSKI: No.

7 THE WITNESS: No.

8 ATTORNEY HODGE: I'm sorry.  
9 I'm just not technically advanced. I was just  
10 trying to find someone in my office.

11 THE COURT: I'm not seeing it  
12 in my count.

13 ATTORNEY WILCZYNSKI: Your  
14 Honor, if you would like me to share.

15 ATTORNEY HODGE: Can everyone  
16 see it now?

17 ATTORNEY WILCZYNSKI: Yes.

18 ATTORNEY HODGE: Mr. Cutrona,  
19 can you see it now?

20 THE WITNESS: Yes, and I have a  
21 copy.

22 ATTORNEY HODGE: Your Honor,  
23 can you see it now?

24 THE COURT: Yes.

25 **(Defendant's Exhibit A**

1 published on computer screen)

2 BY ATTORNEY HODGE:

3 Q Showing you Exhibit A, now I ask do  
4 you recognize it?

5 A I do, it's the invoice for my unit  
6 5401-10.

7 Q And what is the date of the invoice?

8 A The date of the invoice at the  
9 bottom statement date is October 20th of '21.

10 Q And is this issued to you in your  
11 individual name?

12 A It is in my individual name.

13 Q And what is the amount of the  
14 invoice to you, here.

15 A The total amount billed was  
16 \$3,523.27.

17 Q And when did the invoice tell you  
18 you were obligated to pay this amount?

19 A The due date is November 22nd of  
20 2021.

21 Q And what do you understand this  
22 invoice to represent?

23 A As worded on the document the  
24 invoice is for the maintenance fees for CU-1  
25 for billing period from 2017 to 2021, and it

1 refers to the four page letter from  
2 Neighborhood Association that was transmitted  
3 through the mail and email by Great Bay.

4 Q So, the invoice on its face shows  
5 that it's the maintenance fee for CU-1 and that  
6 it covers this five year period of 2017 through  
7 2021; is that right?

8 A That is correct.

9 Q And it includes late fees and  
10 interest?

11 A It does.

12 Q So, is this separate and apart from  
13 an invoice you received from Great Bay or the  
14 association for maintenance charges for your  
15 own personal unit?

16 A Yes, it is. Those invoices were  
17 sent out to the individual owners for the  
18 individual suite interests of the condominium,  
19 the deed fractional interests in October, and  
20 they were due by the beginning of November  
21 which has already passed.

22 Q So, this is separate in addition to  
23 the maintenance fee for your own unit?

24 A That is correct.

25 ATTORNEY HODGE: Your Honor, I



1 would like to move the admission of Exhibit A.

2 THE COURT: Any objection,  
3 Attorney Wilczynski?

4 ATTORNEY WILCZYNSKI: Attorney  
5 Wentzel?

6 ATTORNEY WENTZEL: No.

7 THE COURT: Okay, Exhibit A is  
8 admitted.

9 **(Defendant's Exhibit A**  
10 **admitted in evidence)**

11 THE COURT: And just to be  
12 clear, Mr. Cutrona, this \$3,532.27 represents  
13 from 2017 to October, 2021?

14 THE WITNESS: Yes, Your Honor.  
15 It is 1/288th of the total amount that the  
16 Great Bay had previously charged CU-1  
17 assessments to NA.

18 THE COURT: Very well. Thank  
19 you. Attorney Hodge?

20 ATTORNEY HODGE: Yes. Now, I  
21 would like to ask the witness to look at  
22 Exhibit B. I'm going to challenge myself  
23 apparently, but if the Court will permit me,  
24 I'll find a way to do that.

25 Can the witness and the others

1 see Exhibit B?

2 THE COURT: We see a list. So,  
3 you probably need to press on B or that  
4 particular PDF.

5 ATTORNEY HODGE: Can you see it  
6 now?

7 THE COURT: Yes.

8 **(Defendant's Exhibit B**  
9 **published virtually)**

10 ATTORNEY HODGE: My apologies  
11 again.

12 **BY ATTORNEY HODGE:**

13 Q So, do you recognize this document  
14 that's marked Exhibit D, Mr. Cutrona?

15 A I do. It's a four page letter from  
16 the Great Bay Association. It's appropriately  
17 titled invoice for unpaid maintenance  
18 assessments 2017 through 2021.

19 Q And did you understand this to be  
20 related to the invoice that you just identified  
21 as an explanation of the basis on which Great  
22 Bay was contending that you were obligated to  
23 pay this amount?

24 A That is correct.

25 Q I would direct your attention to the

1 last page of the memorandum, the last paragraph  
2 beginning with the word accordingly?

3 A Yes.

4 Q Could you read that, please?

5 A It reads: Accordingly, payment for  
6 the enclosed invoice for delinquent assessments  
7 relating to CU-1 is due immediately. As a  
8 courtesy, the members association will waive  
9 50% of the interest and late fees for all suite  
10 owners who accept and pay the invoice before  
11 November 9th of 2021.

12 If the invoice is not paid in  
13 full within 30 days, the Members Association  
14 will take further action as provided for in the  
15 declaration.

16 Q And did you receive a copy of the  
17 letter, Exhibit B from Great Bay at or about  
18 the same time that you received the invoice  
19 that you identified?

20 A I did. They came at the same time  
21 and this is my copy.

22 Q And to your knowledge did the other  
23 members of NA receive similar invoices and  
24 letters from Great Bay?

25 A Yes, those that I've spoken to

1 directly or that have reached out to the board  
2 that confirmed receipt and those who haven't  
3 but through our memos asked us to send them a  
4 copy.

5 Q Now, this letter from Great Bay  
6 purports to explain the basis for assessing NA  
7 members individually; is that right?

8 A That's according to Great Bay, yes.

9 Q Did you agree with their analysis in  
10 this memorandum?

11 A Not at all. In fact they labored in  
12 trying to make it look like it's supported from  
13 the declaration when, in fact, they've written  
14 things and left out words or took out words. I  
15 don't want to assume it was a typo and they  
16 forgot it and that changed the whole context of  
17 what it was they were trying to accomplish.

18 Q Did you refer the memorandum and the  
19 issue of the obligation of NA individual  
20 members to counsel to request an opinion on  
21 that?

22 A I'm sorry, could you repeat that?

23 Q Did you request an opinion from your  
24 counsel on the legitimacy of this assessment to  
25 NA members that received this memo?

1           A       Absolutely. We requested NA counsel  
2 to review it and come back to us and give us  
3 their professional opinion which is our basis  
4 to how we communicated to our members.

5                   ATTORNEY HODGE: Your Honor,  
6 I'd like to move the admission of Defendant's  
7 Exhibit B.

8                   THE COURT: Any objection,  
9 Attorney Wilczynski?

10                   ATTORNEY WILCZYNSKI: Your  
11 Honor, to the extent that this witness has not  
12 testified about any particulars about this  
13 document other than expressing his personal  
14 opinion as to what it says, I would have an  
15 objection to the admissibility of this document  
16 Your Honor.

17                   THE COURT: But he also  
18 testified to the very last portion, the last  
19 statement, specifically in the document itself.

20                   ATTORNEY WILCZYNSKI: That's  
21 true, Your Honor, but the balance of his  
22 testimony related to his opinion as to whether  
23 or not the statements made generally -- the  
24 statements made by Great Bay Association were  
25 valid or binding or in any way shape or form

1 appropriate without even the slightest bit of  
2 pointing to those portions of the document that  
3 he felt that way other than saying, well they  
4 took out a word.

5 That's a four page document,  
6 Your Honor. I would object to the  
7 admissibility of the entire document. I have  
8 no objection to the admissibility of that  
9 portion of the document to which he  
10 particularly testified. He didn't testify to  
11 all of it.

12 ATTORNEY HODGE: Your Honor, if  
13 I may be heard?

14 THE COURT: Yes.

15 ATTORNEY HODGE: Your Honor,  
16 the witness has testified that he and other  
17 members of NA received this communication from  
18 the plaintiff as an explanation of their  
19 invoice. We're certainly not offering it for  
20 the truth of the matters asserted in the  
21 document.

22 In fact, the matters asserted  
23 in the document are obviously disputed.  
24 That's the subject of the motion. But the fact  
25 that the invoice was sent by Great Bay to NA

1 members to justify the assessment is certainly  
2 a legitimate point of evidence, and the witness  
3 has already authenticated the document. So, I  
4 would ask the court to admit it and I assume  
5 Great Bay will defend its position in the  
6 letter, but I think the point made by Attorney  
7 Wilczynski doesn't go to the admissibility of  
8 the correspondence from Great Bay to NA. It  
9 just goes to their argument of the validity of  
10 their position.

11 THE COURT: Very well. Exhibit  
12 B of the defendant is admitted.

13 ATTORNEY HODGE: Thank you,  
14 Your Honor.

15 ATTORNEY WILCZYNSKI: Thank you  
16 your.

17 (Defendant's Exhibit B  
18 admitted in evidence)

19 BY ATTORNEY HODGE:

20 Q So, Mr. Cutrona, in addition to  
21 these communications from Great Bay, did you  
22 receive any communication from the entity that  
23 collects and manage the common charges of the  
24 Ritz Carlton Club about what would occur if you  
25 didn't pay invoices as received?

1           **A**     We did. Each of the suite owners  
2 individually received a letter with the annual  
3 2023 -- 2022 assessments dated October 1st on  
4 letterhead head from the Ritz Carlton Club  
5 St. Thomas, the director of Finance from the  
6 Ritz Carlton Club to sign.

7                     ATTORNEY HODGE: Your Honor,  
8 may we have permission to show the witness  
9 Defendant's Exhibit C?

10                    THE COURT: Yes.

11                    ATTORNEY HODGE: Can I ask if  
12 people are seeing this?

13                    THE COURT: You're still in  
14 your list. You need to probably click again.

15                    ATTORNEY HODGE: Okay, thank  
16 you. Does that appear to the others, now?

17                    THE COURT: Yes.

18                    ATTORNEY HODGE: Thank you.

19 **BY ATTORNEY HODGE:**

20                    **Q**     Mr. Cutrona, I want you to look at  
21 what's marked Exhibit C and tell us if you  
22 recognize that. If you need me to move it so  
23 you can see the whole think, let me know. But  
24 I think you have a copy?

25                    **A**     I have my copy in front of me. It's



1 a letter from Marsha Leighton-Hermann the  
2 Director of Finance at the Ritz Carlton Club  
3 St. Thomas. He's a management company  
4 employee. It articulates how payments of the  
5 assessments should be made on the first page  
6 month, and it clearly speaks to the late fees  
7 and usage lockout in items four and five of the  
8 first page which is further expounded upon on  
9 the second page.

10 Q What is the date of this letter from  
11 the Ritz Carton Club about payment of  
12 assessments?

13 A It's dated October 1, 2021.

14 Q And did you receive this in the  
15 normal course from them as a member of NA?

16 A The initial assessment for the key  
17 interest that I own and each member we have  
18 received the same, and it came with the invoice  
19 for those assessments, and it included the  
20 budget which shows the commercial unit as well  
21 as well as two and three bedroom budgets to  
22 support the assessment.

23 Q So, you got this notice when you got  
24 your original assessment for your own personal  
25 unit?

1           A     That's correct.

2           Q     What did the notice tell you would  
3 be the consequence if you fail to pay amounts  
4 assessed by the date due?

5           A     Reading from item five on the first  
6 page of the letter it reads, usage lockout at  
7 all locations until all delinquent balances are  
8 paid will also occur ten days after the due  
9 date mentioned in number one above referring to  
10 when the payment due date is stated on the  
11 invoice.

12                   ATTORNEY HODGE: I move the  
13 admission of Defendant's Exhibit C.

14                   THE COURT: How does this  
15 relate directly to the invoices that were sent  
16 out by Great Bay on October 20th?

17                   ATTORNEY HODGE: Are you asking  
18 the witness?

19                   THE COURT: Yes, I'm trying to  
20 understand the correlation between the lockout  
21 on the personal -- from the personal side of  
22 owning these residences in relation to what the  
23 dispute is here with respect to CU-1 and the  
24 invoices with respect to CU-1.

25                   ATTORNEY HODGE: Mr. Cutrona,

1 can you speak to that?

2 THE WITNESS: I think I can.  
3 In the previous exhibit, the last paragraph I  
4 read into the record, it quoted very  
5 specifically that if the invoice is not paid in  
6 full within 30 days, the members association  
7 will take further action as provided for in the  
8 declaration.

9 This memo which covers all  
10 assessment buildings is a standard assessment  
11 billing protocol and ruling procedure approved  
12 by the Great Bay board for all assessments,  
13 number one, and number two, all of the items  
14 mentioned in the letter referring to the  
15 declarations are termed lockout sanctions that  
16 come upon an individual owner if he or she has  
17 not paid his own suite interest assessment, and  
18 in this case don't pay the GBCOA CU-1  
19 assessment.

20 And so this is included here  
21 because on the second page it actually refers  
22 to a section of the affiliation agreement where  
23 it goes further into the sanctions of lockout  
24 that are part of the declaration.

25 So, just a linkage and a

1 further definition with is probably why GBCOA  
2 broadly said as provided for in the declaration  
3 because we previously received this as we do  
4 every year, the lockout sanctions.

5 ATTORNEY WENTZEL: Your Honor,  
6 if I may be heard.

7 THE COURT: Yes.

8 ATTORNEY WENTZEL: I object to  
9 the witness speculating about the motivation of  
10 something that GBCOA said.

11 THE COURT: Sustained.  
12 Sustained.

13 ATTORNEY HODGE: May I ask the  
14 witness some further questions on this issue,  
15 Your Honor?

16 THE COURT: Yes, because I  
17 still need to get it clear.

18 **BY ATTORNEY HODGE:**

19 Q Mr. Cutrona Exhibit A which you  
20 identified as the assessment to you  
21 individually and the other NA members for  
22 maintenance fees for CU-1. Do you remember  
23 that one?

24 A Yes.

25 Q So, according to that invoice, you

1 were being charged an additional maintenance  
2 fee beyond the one you were originally billed  
3 for your unit, correct?

4 A Yes.

5 Q An additional maintenance fee for  
6 CU-1?

7 A Yes.

8 Q And Exhibit A had a due date in it  
9 that stated that if you didn't pay by that  
10 date, the charge would be considered  
11 delinquent, correct?

12 A It explicitly said in a footnote on  
13 the invoice as you showed that interest lower  
14 of 9% or the highlighted rate permitted by law  
15 will be assessed on any unpaid maintenance fee  
16 balance 10 days after the November 22nd due  
17 date.

18 Q And Exhibit B which you identified  
19 was the memo that accompanied this that you  
20 read the quote from it indicated that the  
21 payment of that enclosed invoice for what is  
22 called delinquent assessment was due  
23 immediately, correct?

24 A That's correct.

25 Q So, when the memo that is before you

1 now Exhibit C says and the portion you read  
2 usage lockout at all locations until all  
3 delinquent balances are paid would occur 10  
4 days after the due date, what did you  
5 understand that to be with regard to what would  
6 happen if you didn't pay the second invoice  
7 that Great Bay sent you for CU-1?

8 ATTORNEY WENTZEL: Your Honor,  
9 I have an objection. The question is what's  
10 his belief or interpretation about Defendant's  
11 Exhibit C which does not relate as Your Honor  
12 observed to the CU-1 assessments, and how does  
13 he interpret that to apply to other unrelated  
14 assessments.

15 Exhibit C, Defendant's Exhibit  
16 C, the witness has admitted and Your Honor has  
17 observed is the regular annual dues that every  
18 member of GBCOA owes. It does not relate to  
19 the CU-1 assessments. And now she's asking the  
20 witness what does GBCOA means in Defendant's  
21 Exhibit C if applied to subsequently issued  
22 assessments related to CU-1 and that's just  
23 improper.

24 ATTORNEY HODGE: I'm not asking  
25 the witness to tell us what GBCOA meant. I'm

1 asking him to tell us what he understood as the  
2 recipient of these three communications about  
3 what was being written because the notices from  
4 GBCOA said you're being assessed these amounts  
5 to be paid immediately, and if you don't pay  
6 these amounts, it will be treated as  
7 delinquent, and the witness has testified that  
8 he had in hand this notice from Ritz Carlton  
9 which is in charge of enforcement saying that  
10 all delinquent balances had to be paid within  
11 10 days after the due date or there will be a  
12 usage lockout and I'm asking him what he  
13 understood as the recipient of these  
14 communications what this meant about his risk  
15 for his personal unit. Not what GBCOA meant.

16 THE COURT: I don't see -- and  
17 that's my concern with Exhibit C, I'm still not  
18 seeing the correlation to CU-1 assessments.  
19 This seems to be personal with respect to each  
20 residence. This usage lockout under paragraph  
21 five seems to be personal. So, that's why I'm  
22 trying to see if there's a correlation here,  
23 but I'm not seeing it thus far.

24 **BY ATTORNEY HODGE:**

25 Q May I ask this question then?

1 Mr. Cutrona, looking at Exhibit A which you did  
2 already and the invoice which charged you the  
3 maintenance fees and amounts shown there, what  
4 units would that invoice go to? Do we need to  
5 show you Exhibit A again?

6 A No, I have it. It's unit 5401,  
7 interest ten which is my suite unit interest.

8 Q So, this invoice to you for this  
9 proportionate share of CU-1 charges was being  
10 billed to you for unit 5401; is that right?

11 A Yes.

12 THE COURT: Attorney Hodge, I  
13 understand what you're saying but it still does  
14 not clearly or equivocally link itself to the  
15 lounge. It seems to be your client's  
16 perception or his interpretation, his  
17 assumption to what Ritz Carlton Club --

18 ATTORNEY HODGE: Exhibit C,  
19 Your Honor.

20 THE COURT: Yes, Exhibit C,  
21 unless you can make the link between Great Bay  
22 and the Ritz Carton, I'm not seeing it.

23 **BY ATTORNEY HODGE:**

24 Q Very good, Your Honor. Let me ask a  
25 few more questions if I may. Could you



1 explain, Mr. Cutrona, the author of this memo  
2 and Great Bay in terms of assessments or  
3 maintenance fees?

4 ATTORNEY WENTZEL: Your Honor,  
5 I object to the form of the question. I don't  
6 know how it relates to the specific observation  
7 that Your Honor has made, the assessment that  
8 is subject of any motions for TRO which is  
9 Defendant's Exhibit A does not have any threat  
10 of a lockout like the letter which is  
11 Defendant's Exhibit C that relates to the  
12 general assessment that preceded the CU-1  
13 assessments.

14 It's a separate assessment, and  
15 so the witness said what's the relationship  
16 between the Ritz Carlton and assessments, that  
17 doesn't go to the point. It's not answering  
18 Your Honor's, question.

19 ATTORNEY HODGE: I am  
20 attempting to answer Your Honor's question and  
21 contrary to Mr. Wentzel's position, the point  
22 is that the assessments are issued by Great Bay  
23 and this collection letter that we have as  
24 Exhibit C refers to what happens to owners who  
25 don't pay their balances and become delinquent.

1 I think it's proper to ask the  
2 witness what is the role of this entity that is  
3 to say, Ritz Carlton --

4 THE COURT: I'm not sure if he  
5 is a the proper -- I'll allow you to ask the  
6 question, but I'm not sure if he is the proper  
7 witness to answer the question. It cannot be  
8 based upon his opinion or his assumption. It  
9 has to be -- there must be some other witness  
10 whether it's the financial officer or some  
11 representative of Great Bay or the Ritz Carlton  
12 Club to establish that they are one in the same  
13 in terms of the invoices or the fees or the  
14 assessments or whatever the case may be, but  
15 I'll still allow you to ask the question.

16 ATTORNEY HODGE: Thank you,  
17 Judge.

18 **BY ATTORNEY HODGE:**

19 Q So, Mr. Cutrona, you indicated  
20 earlier in your testimony that before being the  
21 president of Neighborhood Association, you were  
22 also a member or president of the Great Bay  
23 Association; is that right?

24 A That's correct.

25 Q And how many years did you serve as

1 an officer of either or both of those two  
2 entities?

3 A For Great Bay I served the last six  
4 years of I think ten years of the Great Bay  
5 Condominium Association.

6 Q Okay, ten years as president of  
7 Great Bay and how long as --

8 A Six years as president of Great Bay.

9 Q And how long as president of  
10 Neighborhood Association?

11 A Probably the same number of years.

12 Q And in your work as president of  
13 both organizations, can you tell whether you've  
14 become familiar with the relationship, if any,  
15 between Great Bay and the Ritz Carlton Club?

16 A Yes.

17 Q So, just briefly explain to the  
18 Judge your nature -- your source of information  
19 about the relationship of those two entities?

20 A The Ritz Carlton Club St. Thomas,  
21 Your Honor, which the letterhead for which  
22 Exhibit C is written on is just another name  
23 for the entire condominium of Great Bay  
24 Condominium Association, Number one.

25 Number two, the author of that

1 is as director of finance is a Ritz Carlton  
2 management company person who acts as the  
3 finance director both of GBCOA and of the NA  
4 under the management agreement that we have,  
5 individually as NA and GBCOA.

6 In her memo for assessment  
7 billing, this goes to residential owners, it  
8 goes to commercial owners, it goes to suite  
9 owners. She articulates when the payments are  
10 due, where they're supposed to go and she  
11 articulates from the declaration the major  
12 sanctions that will be brought upon them if  
13 they are delinquent which I referred to  
14 earlier.

15 ATTORNEY WENTZEL: Your Honor,  
16 can we have some reference to what letter the  
17 witness is referring to in his testimony so  
18 it's clear what he's talking about.

19 THE COURT: Mr. Cutrona, what  
20 are you referring to precisely?

21 THE WITNESS: Your Honor, all  
22 my comments this time was on Exhibit C.

23 THE COURT: Very well.

24 THE WITNESS: The letter dated  
25 October 1st of 2021 from Marsha

1 Leighton-Hermann. On the second page of that,  
2 the link that I made to the four page letter  
3 that came with out invoice where it refers to  
4 sanctions after 30 days now reading from  
5 Exhibit B in the last paragraph it says if the  
6 invoice is not paid in full within 30 days the  
7 Members Association will take further action  
8 provided for in the declaration.

9 This memo quotes some, not all  
10 of those elements of the declaration on page  
11 two, the second to last paragraph identifies  
12 late fees and interest charges per the  
13 declarations and U.S.V.I. law, and the last  
14 paragraph and it states very clearly in that  
15 any interest charges allowed pursuant to  
16 section 8.2(a) of the supplementary declaration  
17 of the condominium.

18 THE COURT: Okay, the  
19 representation to the Court in the motion for  
20 the TRO was at least what the court interpreted  
21 it to mean was lockout from your personal  
22 residence. What I'm looking at under section  
23 six of what's on the screen now seems to be  
24 lock out from club. Am I interpreting it  
25 correctly? I'm trying to understand what I'm

1 looking at.

2 THE WITNESS: It is confusing,  
3 Your Honor, and I apologize for it. The Ritz  
4 Carlton Hotel Company created the Ritz Carlton  
5 Destination Club. One of those clubs is in St.  
6 Thomas and we refer to it as the Ritz Carlton  
7 Club St. Thomas.

8 There's one in Aspen. There's  
9 one in Lake Tahoe. There's one --

10 THE COURT: I understand that.  
11 I understand.

12 THE WITNESS: So, the  
13 references here are references that are in our  
14 declaration for the condominium of Great Bay  
15 that take away the access to your 21 days that  
16 are reserved allocation that you pay your  
17 assessment for.

18 ATTORNEY WENTZEL: Your Honor,  
19 could I have a reference as to what he's  
20 referring to now with this testimony about  
21 being locked out? What is he referring to?

22 THE COURT: I think he's  
23 referring to section six of what's on the  
24 screen.

25 ATTORNEY WENTZEL: Of what

1 exhibit?

2 THE COURT: C.

3 THE WITNESS: You're right,  
4 Your Honor. Particularly, the last paragraph  
5 of the letter.

6 THE COURT: The second page,  
7 Attorney Wentzel.

8 ATTORNEY WENTZEL: Of  
9 Defendant's Exhibit B.

10 THE COURT: No. No. No. I'm  
11 sorry, Defendants Exhibit C, the second page,  
12 Section six.

13 ATTORNEY WENTZEL: And for the  
14 record, this is the letter that relates to  
15 different assessments that are the subject of  
16 the motion for TRO. You could ask the witness  
17 that. I'm sure he will admit it.

18 ATTORNEY HODGE: I'm sorry. I  
19 don't understand the objection in the middle of  
20 the question.

21 ATTORNEY WENTZEL: The  
22 objection, Your Honor is that this is  
23 misleading. The Court is correct that this  
24 reference to lockout in Defendant's Exhibit C  
25 has no relationship to the assessments that are

1 the subject for the motions for TRO.

2 ATTORNEY HODGE: That's an  
3 argument.

4 THE COURT: No, Attorney Hodge.  
5 No, it's not. That's the Court's  
6 interpretation and that's why I'm saying that.  
7 I'm reading what you have on the screen and  
8 nowhere in there does it seem to refer to the  
9 personal residences as was stated in the TRO.

10 ATTORNEY WENTZEL: If you look  
11 at the date, Your Honor --

12 ATTORNEY HODGE: May we ask the  
13 witness --

14 THE COURT: I'm sorry. One  
15 person at a time.

16 ATTORNEY HODGE: May we ask the  
17 witness to look at this language and speak to  
18 it because obviously he's the one with the  
19 knowledge.

20 THE COURT: He is speaking to  
21 it, but it's not linking whatsoever to the  
22 motion that was filed.

23 ATTORNEY WENTZEL: And if I may  
24 point out, Your Honor.

25 THE COURT: Yes, you may.



1                   ATTORNEY WENTZEL: Exhibit C is  
2                   dated October 1, and the witness testified that  
3                   the assessment that is shown in Exhibit B for  
4                   the CU-1 assessment is dated October 20th, 20  
5                   days later.

6                   THE COURT: All right. So,  
7                   Attorney Hodge, I'm going to give you one more  
8                   chance to clarify this for the Court, please.

9                   ATTORNEY HODGE: Okay. I think  
10                  it's actually better for the witness, but I'd  
11                  like to focus the witness's question on the  
12                  language that's highlighted in yellow on the  
13                  screen now and ask you to address for the Court  
14                  what significance the lockout language there  
15                  has to the right of NA members to use of their  
16                  own 21 day allocations in St. Thomas, their  
17                  residential use that we've been talking about.

18                  ATTORNEY WENTZEL: Objection,  
19                  Your Honor.

20                  ATTORNEY HODGE: Could we ask  
21                  the witness to speak to that without objection.

22                  THE COURT: Overruled, Attorney  
23                  Wentzel. He gets the opportunity to respond.  
24                  Go ahead Mr. Cutrona.

25                  THE WITNESS: Thank you, Your

1 Honor. What I was trying to do was link the  
2 sections with reference to the provisions of  
3 the declarations that were in the previous memo  
4 to this memo by giving you one example of  
5 section six assessments of the affiliation  
6 agreement.

7 Your Honor, the affiliation  
8 agreement is referenced in the declaration and  
9 is part of it as are the rules and regulations  
10 that he board put in place periodically.

11 This paragraph particularly  
12 prohibits access of a member to the club and  
13 that's St. Thomas Club where their interest in  
14 the unit is or any other club that they could  
15 go into with unpaid annual members dues, late  
16 payment fees, and interests.

17 Members who have unpaid  
18 assessments, late fees and interests owing to  
19 the association shall be locked out from all  
20 Ritz Carlton Destination Clubs including their  
21 home club in St. Thomas. Locked out per their  
22 declarations include no access to reserved  
23 allocation, which is the time they have the 21  
24 days which rotates or space available  
25 reservations which is the time we can pay a

1 very minimal fee to get access when it's not  
2 taken by the owner at any destination club, if  
3 you do not timely make payments of all amounts  
4 due, all amounts due and owing for common  
5 charges the lockout will be implemented and  
6 shall remain in place until all amounts due and  
7 owing including interest and late charges are  
8 paid in full.

9 **BY ATTORNEY HODGE:**

10 Q Now, Mr. Cutrona, just so there's no  
11 confusion, the use of the term club there. I  
12 mean that might be understood by somebody to be  
13 a place where you go to have festivities, but  
14 the language that you were just reading where  
15 you were talking about people not having the  
16 right to use their own residential 21 day  
17 allocation, can you just clarify for the court  
18 what your significance is for your right to use  
19 your own 21 days in St. Thomas in case of  
20 non-payment?

21 ATTORNEY WENTZEL: I object,  
22 Your Honor. She's asking about the effect of  
23 not paying the annual dues that every member of  
24 GBCOA pays. She's not asking about the CU-1  
25 assessment that are the subject of her motion.

1 THE COURT: Sustained.

2 Sustained. We need to move on from Exhibit C.  
3 It's not admitted. If you were making the  
4 request, it's not going to be admitted.

5 ATTORNEY HODGE: I'm sorry,  
6 Your Honor. You're not admitting this exhibit?

7 THE COURT: No.

8 **BY ATTORNEY HODGE:**

9 Q Mr. Cutrona, based on the documents  
10 that were sent to you as a member of NA in  
11 connection with the assessment?

12 THE COURT: We can take down  
13 the screen, Attorney Hodge, please.

14 ATTORNEY WILCZYNSKI: Maria,  
15 perhaps you should just stop sharing your  
16 screen.

17 THE COURT: Okay.

18 Q Mr. Cutrona, based on your  
19 understanding of receipt of the invoice that  
20 you received from Great Bay on the common  
21 charges for CU-1. What is your understanding  
22 of what will happen if I don't make that  
23 payment by the 22nd of November?

24 ATTORNEY WENZEL: Objection,  
25 Your Honor.

1 THE COURT: Sustained.  
2 Sustained.

3 ATTORNEY HODGE: Your Honor,  
4 I'm not sure what to do with that ruling.  
5 You're not going to permit the witness to  
6 explain what he understands the penalty to be  
7 if he doesn't pay?

8 THE COURT: No, we just went  
9 through the process of trying to determine what  
10 is defined as a lockout and it's not associated  
11 with the invoices that were issued on October  
12 20th.

13 ATTORNEY HODGE: Well, I  
14 understand Your Honor hasn't admitted Exhibit  
15 C, but I think the witness should be permitted  
16 to explain what he understands the consequences  
17 of not paying would be because the invoice  
18 Exhibit A, and the memo, Exhibit B, they have  
19 been admitted in evidence.

20 THE COURT: His opinion has to  
21 be based on -- his opinion or his assumption or  
22 something or his belief has to be based on  
23 something in fact. Not just his mere  
24 speculation. It has to be based on something,  
25 whether it's a letter or a statement made

1 directly to him by another person. Of course,  
2 that person is not here to testify, but it has  
3 to be based on something, not just his belief.

4 ATTORNEY HODGE: Well, Your  
5 Honor. Know that the witness has indicated  
6 that he has a long history as the president of  
7 both organizations and I think he should be  
8 entitled to explain what the consequences are?

9 THE COURT: That doesn't  
10 necessarily mean that -- and I forgot the name  
11 of the lady on the letter, Exhibit C. It  
12 doesn't necessarily mean that they still carry  
13 the same practices out since he has left the  
14 seat of the president for Great Bay.

15 ATTORNEY HODGE: Agreed, Your  
16 Honor. He's not the president any more, but he  
17 has a long history as the president and then  
18 he's been the president of the related  
19 association, and he's a member and I think he  
20 should be permitted to explain what he  
21 understands to be the penalties or consequences  
22 of non-payment.

23 THE COURT: I would taken the  
24 testimony from the person that authored that  
25 letter, but that person is not here.

1                   ATTORNEY HODGE:  If Your Honor  
2                   feels that we need the testimony of the person  
3                   who authored Exhibit C, I would ask the Court  
4                   to adjourn and allow us to call that person.

5                   THE COURT:  I have no problem  
6                   with you calling that person, and I will  
7                   continue the hearing and we can always have  
8                   that testimony at a later date.

9                   ATTORNEY HODGE:  So, I would  
10                  ask the Court obviously to have it as soon as  
11                  possible so we don't lose the protection of the  
12                  status quo while we get that additional witness  
13                  for you.

14                  ATTORNEY WILCZYNSKI:  Your  
15                  Honor?

16                  THE COURT:  I have no problem  
17                  extending the TRO.  Okay, I'll hear from you,  
18                  Attorney Wilczynski.

19                  ATTORNEY WILCZYNSKI:  Well,  
20                  Your Honor, if that's true that you're going to  
21                  extend the TRO there's going to have to be a  
22                  bond now.

23                  THE COURT:  I'm sorry.  I can't  
24                  hear you.

25                  ATTORNEY WILCZYNSKI:  A bond.

1 THE COURT: Oh, a bond. Okay.

2 ATTORNEY HODGE: We're prepared  
3 to address the amount of the bond if the Court  
4 would want to hear us on that now?

5 THE COURT: Yes, please.

6 ATTORNEY HODGE: So, under Rule  
7 65 of the Virgin Islands Rules, the bond is  
8 intended to cover the cost of compliance with  
9 the Court's order and damages reasonably  
10 expected by the restrained party during the  
11 period of the restraining if it's found to have  
12 been improper.

13 On the cost of compliance, we  
14 have marked as an exhibit, but I don't believe  
15 it's now in dispute an email sent by Great Bay  
16 to the members of NA on the day after our  
17 status conference in which they notified the  
18 members of NA that the Court had ordered the  
19 invoice rescinded pending further action.

20 That emails sent to all NA  
21 members, essentially a blast email presumably  
22 costs nothing. It may cost a few dollars to  
23 have it typed up, but the cost of complying was  
24 essentially nothing. As to the damages that  
25 Great Bay suggested that was sustained if the



1 injunction were improper, we submit that there  
2 were no damages because as the Court is aware  
3 from the really essentially uncontested  
4 evidence, Great Bay was willing and able to  
5 issue an invoice to all NA members demanding  
6 retroactive payments for these assessments for  
7 a period of five years including interest and  
8 late fees again with essentially a blast email.

9 If at some point the court  
10 determines take the injunction was not properly  
11 entered and that it rescinded or vacated, the  
12 very same invoices could simply be sent again,  
13 and the very same people that they would have  
14 sought to collect them from originally would  
15 owe them at that point. On the other hand as  
16 we believe in this case and if it is ultimately  
17 determined that Great Bay is the owner of this  
18 unit and they should be responsible for these  
19 common charges, then they would have suffered  
20 nothing.

21 But in either case, they would  
22 certainly not be damaged in any substantial  
23 amount because they would be in exactly the  
24 same position that they are now because of the  
25 fact that they have asserted a right to collect

1 interest on any amounts they're seeking.

2 So, they have a built in  
3 protective mechanism for themselves if it's  
4 determined in the future that the injunction  
5 shouldn't have been entered. So, we submit  
6 costs are essentially nil. Damage is  
7 non-existent. So, we think at most a nominal  
8 bond will be appropriate.

9 THE COURT: All right. Very  
10 well. Attorney Wilczynski?

11 ATTORNEY WILCZYNSKI: Your  
12 Honor, I believe Attorney Wentzel will respond  
13 to that.

14 ATTORNEY WENTZEL: Your Honor,  
15 if I may?

16 THE COURT: Yes.

17 ATTORNEY WENTZEL: Rule 65(c)  
18 which is about security for the entry of a TRO.  
19 It says that the Court may issue the  
20 preliminary injunction or temporary restraining  
21 order only if the movant gives security and in  
22 an amount that the Court considers proper to  
23 pay the costs and damages sustained by any  
24 party found to have been wrongfully enjoined or  
25 restrained.

1                   So, what counsel is saying is  
2 well, we can send an email out to comply with  
3 the TRO. That's not the harm. We're talking  
4 about \$900,000 worth of assessments that are  
5 being enjoined and they're asking for it to be  
6 enjoined until as Attorney Hodge says the court  
7 ultimately rules on the question of whether or  
8 not, you know, who is liable for the CU-1  
9 assessment which we have pointed out is not  
10 even raised by any parties pleading in this  
11 case.

12                   So, at some indeterminate time  
13 in the future even if Your Honor chooses to  
14 address that question regardless of our  
15 objection. And so we're talking about interest  
16 on 900,000 which next month, come January it's  
17 going to be \$1.2 million because another year  
18 of assessments of CU-1 is going to be due in  
19 January.

20                   Interest on a million dollars  
21 to some indeterminate time in the future is a  
22 substantial injury that we would have suffered  
23 if there's an ultimate determination that the  
24 TRO or injunction was improperly granted.

25                   So, it's not just the cost of

1 sending an email. It's the interest that we're  
2 losing on a million dollars to some  
3 indeterminate time in the future.

4 ATTORNEY HODGE: May I just  
5 briefly reply, Your Honor?

6 THE COURT: Yes.

7 ATTORNEY HODGE: The point I  
8 was making is that interest is not a damage or  
9 loss to Great Bay because the conduct that is  
10 before you, Judge, is the assessment to NA  
11 owners, not just of these common charges, but  
12 of interest and late fees.

13 Great Bay has asserted the  
14 right and has, in fact, issued invoices for the  
15 maintenance fees and interest and late fees  
16 going back five years. So, if the injunction  
17 is later vacated, it is a given. It is a  
18 certainty that they would issue and invoice to  
19 the same people including interest and  
20 penalties.

21 So, they would recover the  
22 interest that they're now claiming that they  
23 would be entitled to. Obviously, we dispute  
24 that they would do that, but it is not a damage  
25 because it is something that they have devised

1 for themselves as a means of protecting  
2 themselves against.

3 If they win they get their  
4 common charges and interest and if they lose,  
5 they shouldn't be making these people pay those  
6 amounts in the meantime, and frankly, Your  
7 Honor, there's no way that the Neighborhood  
8 Association could pay a huge bond.

9 It's a non-profit corporation  
10 with essentially no assets. But, the case law  
11 and the language in the rule is that this  
12 should simply protect the defendants from the  
13 cost of complying and damages sustained, and on  
14 this record there will not be any damages  
15 sustained no matter which way Your Honor rules.

16 They will be able to recover as  
17 they seek to now if they prevail and they won't  
18 be entitled to recover if they don't prevail.

19 ATTORNEY WENTZEL: If I may,  
20 Your Honor?

21 THE COURT: Yes, you have may  
22 Attorney Wentzel.

23 ATTORNEY WENTZEL: What Rule  
24 26(c) is it requires security now towards the  
25 interest and late charges that would be due to

1 us in the future if it's found to have been  
2 improperly enjoined. But the fact that we  
3 might be able to bring a money damages claim  
4 against NA for the interest does not obviate or  
5 eliminate the requirement that they post a bond  
6 to secure that potential liability now.

7 THE COURT: I don't agree with  
8 your assessment, Attorney Wentzel. I don't see  
9 the harm in you -- you have the ability at some  
10 point in the future if, in fact, you are  
11 successful in terms of for the purposes of this  
12 hearing, you have the ability just to re-issue  
13 the invoices.

14 ATTORNEY WILCZYNSKI: Your  
15 Honor?

16 ATTORNEY WENTZEL: Your Honor,  
17 the witness -- Attorney Hodge has just admitted  
18 to the Court that NA which is the defendant in  
19 this case that's seeking the TRO has no money.  
20 So, the fact that we're entitled to it later is  
21 not security or protection if they're  
22 improperly seeking an injunction today. She  
23 admitted they have no money. That's exactly  
24 why a security is required.

25 ATTORNEY WILCZYNSKI: Your

1 Honor, if you may just add something just a  
2 little. I think that in the course of the  
3 argument we're missing the fact that there is a  
4 unit at the condominium association. The  
5 upkeep has not been paid for five years. All  
6 the costs associated with that have not been  
7 paid by the members who are obligated -- by  
8 whoever that is obligated to do it, and the  
9 budget of Great Bay Condominium Owners  
10 Association has had to pay the amounts to  
11 upkeep that property, to maintain that  
12 property, to operate that property in an  
13 attempt to do something. None of that is part  
14 of this assessment, but every bit of that is  
15 part of the damage that comes as a result of  
16 the non-payment of the assessments.

17 Those are damages that my  
18 client has suffered in reality. Not in a  
19 dreamland of interest and all that. I'm not  
20 worried about that. What I'm concerned --  
21 sorry, to the extent I'm required to be worried  
22 about it, I will be worried about it but I have  
23 to tell you that there are real damages being  
24 suffered by this client during the last five  
25 years as a result of the non-payment of these

1 assessments, and it affects the entire budget  
2 of Great Bay, the entire association because  
3 money is being robbed from Peter to pay Paul.

4 You can't just shut it down and  
5 don't pay anything for it. There's -- \$160,000  
6 is real or \$150,000 or whatever it is.

7 Mr. Doyle may be able to testify about the  
8 costs associated with maintaining the club when  
9 it's closed and operating the club when it's  
10 open as part of the experience or attempting to  
11 ameliorate or lessen the impact that NA's  
12 wrongful actions has caused to the association.

13 ATTORNEY HODGE: Your Honor,  
14 I'm not used to having to argue against two  
15 lawyers, but if I may briefly with a double  
16 response here speak to this a bit further.

17 In response to Attorney  
18 Wilczynski's point Neighborhood Association has  
19 indicated in the last memo we filed with you  
20 that over the last five years, the same five  
21 years that they're now trying to make NA  
22 members individually pay these assessments for  
23 Great Bay that's had the exclusive use and  
24 occupancy of this lounge.

25 ATTORNEY WENTZEL: There's no



1 affidavit.

2 THE COURT: One second,  
3 Attorney Wentzel. Go ahead, Attorney Hodge.

4 ATTORNEY HODGE: They have  
5 exclusive use of it as Mr. Cutrona's affidavit  
6 pointed out. They've had functions there.  
7 They have had the exclusive use and benefit of  
8 it. They wouldn't even let NA use it for a  
9 meeting. The idea that they're a long  
10 suffering entity here is really not a  
11 legitimate point.

12 But in any case on the specific  
13 question about the wording of the rule and the  
14 question about costs which I think are  
15 indisputably zero to comply and damages. The  
16 fact that there could be delay in receiving the  
17 amount they would now like to recover. Your  
18 Honor, we would point out something they waited  
19 five years to demand from the individuals.

20 They apparently were, you know,  
21 prepared to survive that period of five years  
22 without immediate payment. They were perfectly  
23 willing to bill these people for interest for  
24 those full five years, and if the injunction  
25 were lifted two weeks from now or a month from

1 now at the end of this case, it is a given  
2 certainly that their invoice would go out  
3 including the interest again, the full interest  
4 for that period. So, there's no real damage to  
5 them, Judge.

6 THE COURT: I understand. I  
7 understand and I agree. So, there's no way at  
8 this point. So, your motion with respect to  
9 the bond is denied, Attorney Wilczynski, it's  
10 zero.

11 Now going back to the  
12 testimony, there's no way we can continue at  
13 this point and --

14 ATTORNEY HODGE: But I can't  
15 get that witness right away, Judge. I would  
16 need a little time to get her.

17 THE COURT: I understand. I  
18 understand, but to continue on with the other  
19 exhibits or to continue on with the remaining  
20 testimony and then have her testify at a later  
21 date in the month of December if she's  
22 available. Is that a hardship for anyone?

23 ATTORNEY WILCZYNSKI: As for me  
24 personally, Your Honor, it's not a hardship. I  
25 thought the Court was going to be in recess

1 during the month of December.

2 THE COURT: I'm sorry?

3 ATTORNEY WILCZYNSKI: It was my  
4 understanding from another hearing that we had  
5 yesterday that the Court was going to be on  
6 recess during the month of December.

7 THE COURT: Yes, that is  
8 correct. The latter part of December. The  
9 latter part of December.

10 ATTORNEY WILCZYNSKI: Oh, okay.

11 THE COURT: Attorney Hodge?

12 ATTORNEY HODGE: Are you asking  
13 me about going ahead with the rest of my  
14 testimony, Judge or timing?

15 THE COURT: Yes, go ahead with  
16 the rest of the testimony and then after we're  
17 through with your testimony we can always have,  
18 once you make contact with that other witness  
19 have her testimony.

20 ATTORNEY HODGE: Very well,  
21 Judge. I'm ready for the witness to look at  
22 Exhibit D.

23 THE COURT: Okay. Okay, very  
24 well. Click again.

25 ATTORNEY HODGE: Can the

1 parties and the witness see Exhibit D?

2 THE COURT: Yes.

3 BY ATTORNEY HODGE:

4 Q Mr. Cutrona, can you see Exhibit D?

5 A It's a brochure issued by the Ritz  
6 Carlton Destination Club describing the various  
7 rights and amenities that belong to club  
8 members including the quite interest members by  
9 virtue of their ownership of the residential  
10 condominiums.

11 All these rights and amenities  
12 as described in this exhibit are rights and  
13 amenities that Great Bay has threatened to  
14 terminate for NA members if they do not pay the  
15 disputed assessment for CU-1 by November 22nd.

16 ATTORNEY WENTZEL: Your Honor,  
17 I object and move that that testimony be  
18 stricken. There is no foundation that's been  
19 established. Certainly none has been  
20 identified. For the witness's statement just  
21 now that GBCOA has threatened to deprive any  
22 amenity to any NA member related to the  
23 assessments that are the subject of the motion  
24 for TRO.

25 THE COURT: Attorney Hodge?

1 ATTORNEY HODGE: Yes, Your  
2 Honor, the witness has already identified in an  
3 exhibit directly from Great Bay that indicated  
4 that if people didn't pay these amounts by the  
5 date demanded in full that they would be  
6 subject to further action as provided for in  
7 the declaration.

8 The witness has testified that  
9 Exhibit D includes amenities that the members  
10 would be entitled to under the declaration and  
11 in regards to their ownership that he  
12 understands are to be terminated if they don't  
13 pay as demanded.

14 I think he's entitled to offer  
15 that testimony. If Mr. Wentzel has a witness  
16 to disagree with it, I invite him to call his  
17 witness.

18 ATTORNEY WENTZEL: It's there  
19 for them to show a need be it irreparable harm  
20 and the harm that is alleged is lockout.  
21 It's the only harm. Exhibit D is not the  
22 declaration. It doesn't have anything to do.  
23 Certainly, no foundation has been established  
24 that Exhibit D has anything to do with remedies  
25 available to GBCOA under the declaration if

1 someone doesn't pay his debt.

2 ATTORNEY HODGE: I understand  
3 the witness's testimony is disputed, Your  
4 Honor, but the witness has testified that this  
5 brochure describes rights and amenities of NA  
6 owners that are in jeopardy because of this  
7 assessment if they don't pay. I don't see how  
8 that cannot be admissible. I understand that  
9 it can be disputed, but I don't think that  
10 makes it inadmissible.

11 THE COURT: It's a pretty  
12 picture, but it doesn't add anything to your  
13 motion.

14 ATTORNEY HODGE: This is just  
15 the first page. It's a whole brochure with a  
16 description of all sorts of amenities.

17 ATTORNEY WENTZEL: Just get to  
18 the part where it says lockout.

19 ATTORNEY HODGE: Excuse me,  
20 Mr. Wentzel. I wasn't ready to go through  
21 every bit of the brochure with the witness, but  
22 I can do that and describe in detail the nature  
23 of the amenities in question.

24 THE COURT: This is no  
25 different. This is just another or an

1 extension of Exhibit C.

2 ATTORNEY HODGE: Well, it's a  
3 detailed amplification of the significance and  
4 value of amenities and rights.

5 THE COURT: Until I see the  
6 declaration, this does not help. Until I see  
7 specific language that says that or the  
8 testimony of the person that wrote Exhibit C,  
9 this does not help.

10 ATTORNEY HODGE: I would ask  
11 the Court, if anything, to admit Exhibit D  
12 subject to being connected with the witness's  
13 testimony for Exhibit C.

14 THE COURT: He will just have  
15 to re-appear after she testifies.

16 ATTORNEY HODGE: Very well,  
17 Judge.

18 THE COURT: Okay. Next  
19 exhibit.

20 **BY ATTORNEY HODGE:**

21 Q So, Mr. Cutrona, can you tell the  
22 Court about your own suite interest at the Ritz  
23 and your own plans for its use that are  
24 affected by this issue?

25 ATTORNEY WENTZEL: Object to

1 the question, Your Honor. The statement  
2 affected by this issue. What is he being asked  
3 to address?

4  
5 ATTORNEY HODGE: Here's the  
6 problem, if we're not going to be allowed to  
7 talk about the harm until we have the witness  
8 to go through the connection between Exhibit C,  
9 I think we probably need to adjourn.

10 THE COURT: I understand. I  
11 understand. So, you have finished basically  
12 with your testimony with the actual issuance of  
13 the invoices and now you're trying to assess or  
14 prove the harm which the lockout is the  
15 underlying foundation or basis of this harm?

16 ATTORNEY HODGE: Correct,  
17 Judge.

18 THE COURT: So, we'll have to  
19 adjourn.

20 ATTORNEY HODGE: Very well.

21 THE COURT: Okay.

22 ATTORNEY HODGE: Can we make  
23 some efforts and then notify the Court about  
24 the availability of this particular witness and  
25 see how that works with the Court's schedule.



1 I don't know what your preference is about  
2 that.

3 THE COURT: Okay. I'm not  
4 available next week. The Court is not  
5 available. The week of December 6th.

6 ATTORNEY WILCZYNSKI: Sorry,  
7 Your Honor.

8 THE COURT: December 9th.

9 ATTORNEY WILCZYNSKI: Your  
10 Honor, I have another matter before Judge  
11 Willocks on that date.

12 THE COURT: You're unavailable  
13 the entire day of December 9th?

14 ATTORNEY WILCZYNSKI: That's a  
15 very good point. My understanding is that  
16 Judge Willocks has set a Zoom conference.  
17 Something he never does. So, I'm a little  
18 excited about that and I will have to fly to  
19 St. Croix to attend it.

20 If I did, then it would be all  
21 day. I could confirm that, and at the very  
22 least I think perhaps maybe starting at noon or  
23 later in the day. Unfortunately, given the way  
24 that things are going right now, I don't know  
25 how long this is going to take because we have

1 a significant amount of testimony on our side  
2 as well.

3 THE COURT: So, I could start  
4 on December 9th and I would have to continue  
5 into the recess.

6 ATTORNEY WILCZYNSKI: I'm so  
7 sorry, Your Honor.

8 THE COURT: Oh no. That's  
9 okay. That's all right. That's all right.  
10 So, we'll start on December 9th. December 10th  
11 is out of the question. I have a lot of other  
12 hearings on that day, and then on December 13th  
13 in the afternoon I'll be able to start again.

14 ATTORNEY HODGE: So, I could do  
15 the 9th, Judge and on the 13th I could be  
16 available in the afternoon, also. I have a  
17 morning hearing with Judge Andrews in St.  
18 Croix, but that's also Zoom and I could  
19 certainly be available by afternoon on the  
20 13th.

21 THE COURT: Very well.

22 ATTORNEY WENTZEL: Your Honor,  
23 can we have a talk with our witnesses to make  
24 sure that those dates don't prevent a problem  
25 for them to come back?

1 THE COURT: Yes. Of course.  
2 I'll give you two minutes.

3 ATTORNEY WENTZEL: All right.  
4 Thanks.

5 THE COURT: A two minute break.  
6 All right.

7 ATTORNEY WILCZYNSKI: David,  
8 mute your Zoom and turn your camera off.

9 **(Complies)**

10 I guess I've become the arbiter  
11 of Zoom, Your Honor.

12 THE COURT: I see that. That's  
13 good.

14 **(Brief recess taken and hearing**  
15 **resumed shortly thereafter)**

16 ATTORNEY WENTZEL: For GBCOA  
17 one of the witnesses that I would call is  
18 scheduled on vacation. It's already paid.  
19 They've got the ticket from December 2nd to  
20 December 18th.

21 THE COURT: Wow.

22 ATTORNEY HODGE: So, is that  
23 going to be in a location where she can just  
24 connect by Zoom?

25 ATTORNEY WENTZEL: Well, I

1 don't know but I think it's fair to -- you  
2 know. They're going on vacation. There's  
3 scores of people going on vacation. I didn't  
4 ask her, you know, is there's going to be  
5 somewhere where she can Zoom in, but I would  
6 assume we're going all day on the 9th and all  
7 afternoon on the 13th. I would request that  
8 the Court choose some other dates.

9 THE COURT: I'm sorry, you  
10 what?

11 ATTORNEY WENTZEL: I would  
12 request that the Court choose some other dates.

13 THE COURT: I'm sorry.

14 ATTORNEY WENTZEL: I would  
15 request that the Court choose some other dates.

16 ATTORNEY HODGE: What was her  
17 return date again?

18 ATTORNEY WENTZEL: She's out  
19 through the 18th.

20 ATTORNEY WILCZYNSKI: That's a  
21 long time for a restraining order, David.

22 THE COURT: I have a jury trial  
23 scheduled on December 6th that if it falls  
24 through which I kind of doubt, we could have it  
25 that week of December 6th, but I wouldn't know

1       until --

2                           ATTORNEY WENTZEL: Well, Your  
3 Honor, that doesn't resolve the conflict.  
4 She's on vacation from December 2nd to December  
5 18th.

6                           THE COURT: Yes, you're right.  
7 Okay.

8                           ATTORNEY WILCZYNSKI: Your  
9 Honor, Ms. Chung would be testifying regarding  
10 her affidavit. I don't think her testimony is  
11 anything additional to that.

12                           ATTORNEY WENTZEL: Don't go  
13 that far, Mark. I mean, Your Honor, I'm happy  
14 to call her back and see if we can fix a time  
15 perhaps December 13th in the afternoon where  
16 she can make sure she's somewhere where she can  
17 Zoom in. I don't expect her testimony would go  
18 more than an hour.

19                           Of course, before additional  
20 testimony is elicited before her on December 9  
21 or prior to her on December 13th, I'll have to  
22 call her and see if she can block out an hour,  
23 maybe 90 minutes of time on the afternoon of  
24 the 13th so we can proceed as Your Honor  
25 suggests.

1 THE COURT: Yes, that would be  
2 appropriate. There's no other time. I cannot  
3 go beyond December. I cannot go beyond the  
4 second week of December because after January  
5 is out. So, January and February is out.  
6 They're out and I don't want to, of course,  
7 take this long.

8 ATTORNEY WENTZEL: May I call  
9 her now, Your Honor?

10 THE COURT: Yes, you may.

11 **(Attorney Wentzel called**  
12 **witness and returned**  
13 **shortly thereafter)**

14 ATTORNEY WENTZEL: If another  
15 witness is going we could take a break and she  
16 could come in and we could take her. But  
17 definitely 2:00 to 4:00 p.m. is doable. She  
18 has a detailed itinerary and she looked at it  
19 and this time slot would work for her to be  
20 available at a computer screen.

21 THE COURT: Okay. That's not a  
22 problem.

23 ATTORNEY WENTZEL: Thank you,  
24 Your Honor.

25 THE COURT: So, we're looking

1 at December 9th in the afternoon of one o'clock  
2 in the afternoon, and then December 13th to  
3 continue in the afternoon, also.

4 ATTORNEY WENTZEL: That's works  
5 for us, Your Honor.

6 THE COURT: Both times at --  
7 Well, Attorney Wilczynski, your matter before  
8 Judge Willocks, you said it's in the morning  
9 time.

10 ATTORNEY WILCZYNSKI: Yes.

11 THE COURT: So, do you think it  
12 will finish by 12:00?

13 ATTORNEY WILCZYNSKI: Yes.

14 THE COURT: So, we can start at  
15 noon on December 9th.

16 ATTORNEY WILCZYNSKI: I'm  
17 excited about that, Your Honor. And in any  
18 event, it's possible I might have an associate  
19 do that.

20 THE COURT: Very well, and  
21 we'll continue at 1:00 p.m. on December 13th  
22 and we will block out 2:00 to 4:00 p.m. for  
23 Ms. Chung. Okay, thank you everyone. Have a  
24 good weekend. Everyone is excused. Thank you  
25 Mr. Cutrona. Thank you Mr. Doyle.

1 MR. CUTRONA: Thank you, Your  
2 Honor.

3 ATTORNEY HODGE: I think we  
4 need a writing with the extension of the TRO.  
5 Would the Court want us to submit a proposed  
6 draft on that or how should we handle that?

7 THE COURT: Yes, you can submit  
8 that by email today. Send it to A. Bauman.

9 ATTORNEY HODGE: Yes, I see it  
10 on the screen. Is that viccourts?

11 THE COURT: Yes, dot org.

12 ATTORNEY BAUMAN:  
13 Alexis.bauman@viccourts.org.

14 THE COURT: Okay. Did you get  
15 that, Attorney Hodge?

16 ATTORNEY HODGE: Yes, Your  
17 Honor.

18 THE COURT: Okay, all right.  
19 Very well. Thank you all. Okay.

20 ATTORNEY WILCZYNSKI: Your  
21 Honor, if I may, one thing for the purposes of  
22 my understanding, this hearing we were  
23 unfortunately able to include anything one way  
24 or the other in terms of the TRO or the  
25 injunction, is that right?



1 THE COURT: Well, the TRO  
2 remains in play. We were unable to resolve  
3 anything with respect to the injunction.

4 ATTORNEY WILCZYNSKI: All  
5 right. For the next two weeks?

6 THE COURT: Yes. Yes.

7 ATTORNEY WILCZYNSKI: Okay.

8 THE COURT: Okay. All right.

9 Thank you all.

10 ATTORNEY WILCZYNSKI: Thank  
11 you, Your Honor.

12 THE COURT: Enjoy Thanksgiving.

13 ATTORNEY WENTZEL: Happy

14 Thanksgiving, Your Honor.

15 THE COURT: All right, thanks.

16 **(The proceedings**  
17 **were adjourned)**

18

19 \* \* \*

20

21

22

23

24

25

## CERTIFICATE OF REPORTER

I, DEREK A. PEETS, a Registered Professional Reporter, do hereby certify that the foregoing pages, 1 - 92 inclusive, comprise a full, true, and accurate transcription of the hearing in Great Bay Condominium Owners Association v. The Neighborhood Association, Inc., Case No. ST-2018-CV-00768 as taken from my machine shorthand notes on November 19, 2021.

IN WITNESS WHEREOF, I affix my signature this 11th day of February, 2022.

/s/ Derek A. Peets

---

Derek A. Peets,  
Official Court Reporter

**FILED**

November 19, 2021 04:25 PM  
ST-2018-CV-00768  
TAMARA CHARLES  
CLERK OF THE COURT

**FILED**

May 27, 2022 04:33 PM  
SCT-Civ-2022-0002  
VERONICA HANDY, ESQUIRE  
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

_____ )	
GREAT BAY CONDOMINIUM OWNERS )	
ASSOCIATION, INC. )	CIVIL NO. ST-18-CV-768
)	
) PLAINTIFF, )	ACTION FOR DECLARATORY
V. )	JUDGMENT, TO CANCEL DEED
)	AND TO QUIET TITLE
THE NEIGHBORHOOD ASSOCIATION, INC. )	
)	
_____ ) DEFENDANT. )	

**ORDER EXTENDING TEMPORARY RESTRAINING ORDER**

THIS MATTER HAVING COME ON FOR HEARING on November 19, 2021, upon the motion of the Defendant, The Neighborhood Association, Inc. ("NA"), for a preliminary injunction ("the Motion") against Plaintiff, Great Bay Condominium Owners Association, Inc. ("Great Bay"), under the authority of V.I.R.Civ.P. 65(b), the Court having previously entered a temporary restraining order on November 12, 2021, and having fixed November 19 for a hearing on the Motion, and the Court having heard the arguments of the parties, and having received some evidence on the matter, but having concluded that an adjournment is required to complete the taking of necessary testimony, and the Court being duly satisfied in the premises, NOW, THEREFORE,

IT IS HEREBY ORDERED that the Plaintiff's motion to dissolve the temporary restraining order is denied, and the Court concludes that it has jurisdiction to hear and proceed with the Motion, and it is

FURTHER ORDERED that having heard the parties on the issue of security, no bond will be required of NA in connection herewith, as the Court concludes that the Plaintiff will not incur

Great Bay Condominium Owners Ass'n, Inc. v. The Neighborhood Ass'n, Inc.  
Case No. ST-18-CV-768  
Order

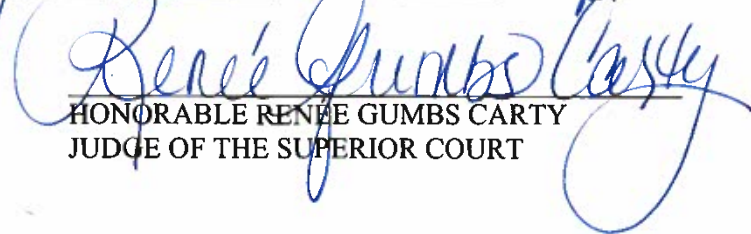
any material costs or damages as a result of the TRO, for reasons discussed at the hearing, if it is later determined to have been wrongfully enjoined, and it is

FURTHER ORDERED that the matter is scheduled for continued hearing on the Motion on December 9, 2021, at 12:00 p.m., via Zoom, with an invitation to issue by the Clerk of the Court to the parties and their witnesses, the hearing to continue thereafter on December 13, 2021, commencing at 1 p.m. (AST), with the time period between 2 p.m. and 4 p.m. reserved for the testimony of Plaintiff's witness, Abbey Chung, and it is


FURTHER ORDERED that the Temporary Restraining Order previously entered, shall be and is hereby extended, for good cause, to the conclusion of the hearing on the Motion;

FURTHER ORDERED that a copy of this Order shall be directed to W. Mark Wilczynski, Esquire, David Wentzel, Esquire, and Maria Tankenson Hodge, Esquire.

SO ORDERED this 19<sup>th</sup> day of November, 2021, at 3:55 o'clock PM.

  
HONORABLE RENEE GUMBS CARTY  
JUDGE OF THE SUPERIOR COURT

ATTEST:  
Tamara Charles  
Clerk of the Court

By:   
for Latoya Camacho  
Court Clerk Supervisor 11 19 2021

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS and ST. JOHN

\*\*\*\*\*

GREAT BAY CONDOMINIUM OWNERS ASSOCIATION	)	
	)	
Plaintiff	)	Case No. ST-18-CV-768
	)	
vs.	)	ACTION FOR DAMAGES
	)	
THE NEIGHBORHOOD ASSOCIATION, INC.	)	
	)	
Defendant.	)	
_____	)	

**THE NEIGHBORHOOD ASSOCIATION, INC. NOTICE OF FILING ADDITIONAL EXHIBIT FOR HEARING ON PRELIMINARY INJUNCTION**

**COMES NOW**, Defendant, The Neighborhood Association, Inc., by and through undersigned counsel, Hodge & Hodge, by Maria Tankenson Hodge, Esq., and gives notice of the filing of the attached exhibit “Q” for consideration at the hearing on December 8, and/or December 13, 2021, on Defendant’s Motion for Temporary Restraining Order and Preliminary Injunction, as requested by the Court. The attached is a new exhibit received by Defendant from Plaintiff since the previous hearing date.

**Respectfully submitted,  
HODGE & HODGE**

Dated: December 7, 2021

By: /s/ Maria T. Hodge  
Maria Tankenson Hodge, Esq.  
1340 Taarneberg, St. Thomas, V.I. 00802  
Tel.: (340) 774-6845 || fax.: (340) 776-8900  
[maria@hodgelawvi.com](mailto:maria@hodgelawvi.com)  
*Attorney for Defendant, The Neighborhood Association, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 7th day of December, 2021, I caused a true and exact copy of the foregoing to be served via the Court's electronic filing system:

W. Mark Wilczynski, Esq.  
Palm Passage, Suite C20-22 || P.O. Box 1150  
St. Thomas, US Virgin Islands, 00801  
*Attorney for Plaintiff, Great Bay Condominium Owners Association*  
[mark@usvilaw.com](mailto:mark@usvilaw.com)

David F. Wentzel, Esq.  
Wentzel Law Offices  
77 W. Washington St. Suite 2100  
Chicago, Ill. 60602  
Email: [dwentzel@wentzellaw.com](mailto:dwentzel@wentzellaw.com)  
Counsel for Plaintiff

/s/ Maria T. Hodge \_\_\_\_\_

**From:** GBCOA <[boardstthomas@aol.com](mailto:boardstthomas@aol.com)>  
**Date:** December 3, 2021 at 2:26:10 PM EST  
**To:** [salcut@comcast.net](mailto:salcut@comcast.net)  
**Subject:** Message from GBCOA Board of Directors  
**Reply-To:** [boardstthomas@aol.com](mailto:boardstthomas@aol.com)



December 3, 2021

Dear Ritz-Carlton Club, St. Thomas Members,

We are writing to inform you of a new program to pair up delinquent members looking to exit the club with members in good standing interested in acquiring additional interests in the club.

The 2021-22 Great Bay Condominium Association, Inc. ("GBCOA") annual maintenance fees were recently due on November 2, 2021. Effective November 12,

2021 if a member did not pay their dues they were considered delinquent and were locked out of using their time and privileges at the club until they became current.

Over the last year or so members have acquired additional interests and more are interested in doing so. Therefore, the board has developed a new program that is responsive to our members whereby current members in good standing who are interested in acquiring additional interests can be paired up with delinquent members who have expressed a desire to the Board in potentially walking away from their ownership in the Club. This program is only targeting those owners on both sides of the transaction who proactively express their interest in being paired up.

**What does this program mean to you?**

You are not required to take any action. However, if you are a member in good standing and you would like to be paired up with a delinquent member who is interested in walking away from their ownership in the club, all you need to do is send an email to [boardstthomas@aol.com](mailto:boardstthomas@aol.com) by February 1, 2022 and express your interest in seeing what interests may be available for you to acquire. There would be no obligation on your part to purchase any of the interests. The club's onsite resale management team of Tenstar/Re-Max will reach out to interested members on a first-come, first-served basis to facilitate a transaction between the two interested parties. All of the details of the transaction will be handled by the Tenstar/Re-Max team; the GBCOA Board's only involvement is pairing up the parties with Tenstar/Re-Max. We believe this program is a win-win-win for members in good standing who wish to acquire an additional interest, the delinquent member, and the association that relies on dues to fund the operations and maintenance of the club.

We are working hard to ensure we minimize the impact of delinquencies on our association and are optimistic this program will be a benefit to all members of our club.

Sincerely

**THE BOARD OF DIRECTORS**  
**GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.**  
6910 GREAT BAY, ST. THOMAS, USVI 00802.

President: Abbey Chung  
Vice-President: Michael Gick  
Treasurer: Thomas Doyle  
Secretary: Jimmy Archie  
Director: Steve Redan

GBCOA | 6910 Great Bay, St. Thomas, 00802 U.S. Virgin Islands

Unsubscribe [salcut@comcast.net](mailto:salcut@comcast.net)

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**EXHIBIT Q**

**A.000695**

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

<u>GREAT BAY CONDOMINIUM OWNERS</u>	)	
<u>ASSOCIATION, INC.</u>	)	CIVIL NO. ST-18-CV-768
	)	
PLAINTIFF,	)	ACTION FOR DECLARATORY
v.	)	JUDGMENT, TO CANCEL DEED
	)	AND TO QUIET TITLE
THE NEIGHBORHOOD ASSOCIATION, INC.	)	
	)	
<u>DEFENDANT.</u>	)	

**NOTICE OF FILING**

Plaintiff, Great Bay Condominium Association, Inc., by and through its undersigned counsel, hereby gives notice of the filing of **PLAINTIFF'S AMENDED EXHIBIT LIST**, a copy of which is attached.

Respectfully Submitted,

**LAW OFFICE OF W. MARK WILCZYNSKI, P.C.**

Dated December 7, 2021

/s/ W. Mark Wilczynski  
**W. MARK WILCZYNSKI, ESQ.**  
P.O. Box 1150  
St. Thomas, VI 00804-1150  
Tel: (340) 774-4547  
Email: [Mark@usvilaw.com](mailto:Mark@usvilaw.com)  
V. I. Bar No.: 515  
**Attorney for Great Bay Condominium  
Owners Association, Inc.**

- AND -

**DAVID F. WENTZEL, ESQ.**  
Wentzel Law Offices  
77 W. Washington St., Suite 2100  
Chicago, IL 60602  
Tel: (312) 697-0500  
Fax: (312) 697-0505  
Email: [dwentzel@wentzellaw.com](mailto:dwentzel@wentzellaw.com)  
**Attorney for Great Bay Condominium  
Owners Association, Inc.**

**A.000696**



*Great Bay Condominium Association, Inc. v. The Neighborhood Association, Inc.*  
Case No. ST-2018-CV-768  
Notice of Filing Plaintiff's Amended Exhibit List

**CERTIFICATE OF SERVICE**

I **CERTIFY** that on this the 7th day of December, 2021, I caused a true and exact copy of the foregoing **NOTICE OF FILING** to be filed using the Court's C-Track E-Filing system which will send notice, unless otherwise indicated below, of same:

**MARIA T. HODGE, ESQ.**  
Hodge & Hodge  
1340 Taarneberg  
St. Thomas VI 00802  
Tel: (340) 774-6845  
Fax: (340) 714-1848  
[maria@hodgelawvi.com](mailto:maria@hodgelawvi.com)  
***Counsel for Defendant***

By:           /s/ Carolyn C. Duncan

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

<b>GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.</b>	)	<b>CIVIL NO. ST-18-CV-768</b>
	)	
<b>PLAINTIFF,</b>	)	<b>ACTION FOR DECLARATORY JUDGMENT, TO CANCEL DEED AND TO QUIET TITLE</b>
<b>v.</b>	)	
	)	
<b>THE NEIGHBORHOOD ASSOCIATION, INC.</b>	)	
	)	
<b>DEFENDANT.</b>	)	

**PLAINTIFF'S AMENDED EXHIBIT LIST**

EXHIBIT NO.	DOCUMENT
EXHIBIT 1	Affidavit of David F. Wentzel
EXHIBIT 1-A	Letter of Margaret Rolando
EXHIBIT 1-B	Bio of Margaret Rolando
EXHIBIT 2	Affidavit of Abigail Chung
EXHIBIT 2-A	St. Thomas Inventory Stats
EXHIBIT 2-B	Letter from Richard Hayward
EXHIBIT 2-C	Email dated 11/13/21 of the Board of The Neighborhood Association, Inc. sent to all Suite Owners

*Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.*  
Case No. ST-18-CV-768  
Plaintiff's Amended Exhibit List

<b>EXHIBIT NO.</b>	<b>DOCUMENT</b>
EXHIBIT 2-D	Great Bay Condominium Association Inc.'s Letter dated 10/22/21 that accompanied Invoice to Suite Owners
EXHIBIT 3	Fifth Amendment to Condominium Declaration
EXHIBIT 4	Fourth Amendment to Supplementary Declaration (Club)
EXHIBIT 5	Articles of Incorporation of Great Bay Condominium Association, Inc.
EXHIBIT 6	Bylaws of Great Bay Condominium Association, Inc.
EXHIBIT 7	Articles of Incorporation of The Neighborhood Association, Inc.
EXHIBIT 8	Bylaws of The Neighborhood Association, Inc.
EXHIBIT 9	RCC St. Thomas Declaration of Condominium
EXHIBIT 10	Fourth Amendment to Condominium Declaration
EXHIBIT 11	Complaint filed in ST-18-CV-768
EXHIBIT 12	Answer of The Neighborhood Association, Inc. in ST-18-CV-768
EXHIBIT 13	Complaint filed in ST-19-CV-650

*Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.*  
Case No. ST-18-CV-768  
Plaintiff's Amended Exhibit List

EXHIBIT 14	Order entered 12/22/20 by the Court on Great Bay Condominium Association, Inc.'s Motion for Consolidation
EXHIBIT 15	NA and GBCOA Residence Access Agreement
EXHIBIT 16	NA and GBCOA Residence Access Agreement First Amendment
EXHIBIT 17	NA and GBCOA Residence Access Agreement Second Amendment
EXHIBIT 18	Letter from Maria Hodge to Abigail Chung
EXHIBIT 19	Condominium Deed re Residence Interest No. 5401-10
EXHIBIT 20	Email exchange between Marsha Leighton-Herrmann and Caroline John
EXHIBIT 21	Letter from Richard Hayward to GBCOA Board of Directors
EXHIBIT 22	Richard Hayward Bio

*Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.*  
Case No. ST-18-CV-768  
Plaintiff's Amended Exhibit List

Respectfully submitted,

DATED: December 7, 2021

**LAW OFFICE OF W. MARK WILCZYNSKI, P.C.**

/s/ W. Mark Wilczynski  
**W. MARK WILCZYNSKI, ESQ.**  
P.O. Box 1150  
St. Thomas, VI 00804-1150  
Tel: (340) 774-4547  
Email: [Mark@usvilaw.com](mailto:Mark@usvilaw.com)  
V. I. Bar No.: 515  
**Attorney for Great Bay Condominium  
Owners Association, Inc.**

- AND -

**DAVID F. WENTZEL, ESQ.**  
Wentzel Law Offices  
77 W. Washington St., Suite 2100  
Chicago, IL 60602  
Tel: (312) 697-0500  
Fax: (312) 697-0505  
Email: [dwentzel@wentzellaw.com](mailto:dwentzel@wentzellaw.com)  
**Attorney for Great Bay Condominium  
Owners Association, Inc.**

Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.  
Case No. ST-18-CV-768  
Plaintiff's Amended Exhibit List

**CERTIFICATE OF SERVICE**

**I FURTHER CERTIFY** that on this the 7<sup>th</sup> day of December 2021, I caused a true and exact copy of the foregoing **PLAINTIFF'S AMENDED EXHIBIT LIST** to be filed using the Court's C-Track E-Filing system which will send notice, unless otherwise indicated below, of same to:

Maria T. Hodge, Esq.  
Hodge & Hodge  
1340 Taarneberg  
St. Thomas V. I. 00802  
Tel: (340) 774-6845  
Fax: (340) 714-1848  
[maria@hodgelawvi.com](mailto:maria@hodgelawvi.com)  
**Counsel for Defendant**

By: s/ Carolyn C. Duncan

# EXHIBIT 15

**RESIDENCE OWNERS AGREEMENT**

**BETWEEN**

**THE NEIGHBORHOOD ASSOCIATION, INC.**

**AND**

**GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.**

**THIS AGREEMENT** entered into this 8<sup>th</sup> day of August, 2013, between THE NEIGHBORHOOD ASSOCIATION, INC., a Virgin Islands not for profit corporation, ("NA") and GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC. ("GBCOA"), a Virgin Islands not for profit corporation,

Witnesseth:

WHEREAS, GBCOA is the Homeowners' Association for Great Bay Condominium pursuant to a Declaration of Condominium recorded on May 21, 2002, and a Supplementary Declaration of Condominium for The Ritz-Carlton Club, St. Thomas, recorded on May 31, 2002, both with the Recorder of Deeds for St. Thomas and St. John; and,

WHEREAS, NA is a not for profit corporation organized and existing for the purpose of providing owners of interval ownership interests in Buildings G and H ("Suites Owners") with an entity responsible for administering a commercial unit at Great Bay Condominium; and,

WHEREAS, NA is also the owner of a condominium unit identified as Commercial Unit - 1 ("CU-1") located on the fifth floor of Building G at Great Bay Condominium ("Fifth Floor Lounge"); and,

WHEREAS, NA presently provides Food and Beverage Service ("F&B Service") for Suites Owners at the Fifth Floor Lounge; and,

WHEREAS, owners of two and three bedroom Residence Interests in Buildings I through L, inclusive at Great Bay Condominium ("Residence Owners") are not members of NA and are not entitled to F&B Service at the Fifth Floor Lounge; and,

WHEREAS, GBCOA and NA agree that it is in the best interest of the Homeowners Association and the commercial unit association to extend membership privileges at the Fifth Floor Lounge to Residence Owners pursuant to the terms and conditions of this Agreement set out herein;

NOW THEREFORE, in consideration of the payments and covenants contained herein, the parties agree as follows:



**1. Residence Owners Membership**

From and after the date of this Agreement, and until said Agreement expires or is otherwise terminated, Residence Owners shall have the privileges and obligations as more particularly set out herein.

**2. Residence Owners Privileges**

Residence Owners shall have the following privileges with respect to the Fifth Floor Lounge:

- a. Residence Owners may make advance reservations, on a space available basis for breakfast, lunch and dinner service in the Fifth Floor Lounge..
- b. Non-Family Guests of the Residence Owners Member may participate in F&B Service in the Fifth Floor Lounge only if they are accompanied at all times by the Residence Owner.
- c. Residence Owners may participate in the breakfast buffet service in the Fifth Floor Lounge on an advance prepayment basis at a cost that will be set by NA or on a reservation basis.
- d. Residence Owners must pay for F&B Service by cash or credit card.
- e. Residence Owners may attend Happy Hour and after-dinner drink service on a space available basis.
- f. Residence Owners may, on a space available basis, attend and participate in all NA Club activities that are posted and advertised to Suites Owners.

**3. Residence Owners Responsibilities**

Residence Owners shall at all times comply with the Rules and Regulations established by NA. A true and correct copy of those Rules and Regulations are attached hereto as Exhibit A and incorporated herein by reference, as amended from time to time by NA. A copy of these Rules and Regulations will be posted inside the CU-1. Failure of any Residence Owner or their guests to comply with said Rules and Regulations may result in that Residence Owner being suspended and/or terminated from participation in this Residence Owners Agreement at the NA Board's sole discretion.

**4. Charge for Residence Owner participation**

In consideration of this Residence Owner Agreement, GBCOA shall pay to NA an annual Fee in an amount equal to the annual dues obligation of NA to GBCOA with respect to CU-1. Said amount shall be paid on or before the first day of each Club Year, which begins after November 1 of each year..

**5. Term of Agreement**

This Agreement shall be effective on the date of execution and shall continue for one Club year thereafter. This Agreement shall renew automatically each succeeding Club year, providing that the F&B Service in the Fifth Floor Lounge meets the following criteria:

- a. The F&B Service in the Fifth Floor Lounge meets or exceeds certain Suites and Residence Owners satisfaction criteria that will be established by NA and approved by GBCOA. Additionally, such Member satisfaction shall be independently surveyed and certified by the Ritz-Carlton Management Company; and,
- b. The F&B Service in the Fifth Floor Lounge is also certified by Ritz-Carlton Management Company as meeting or exceeding Ritz-Carlton Food and Beverage Standards.

**6. Termination**

- a. This Agreement may be terminated by either party by written notice to the other given no later than sixty (60) days before the annual renewal date set out in Paragraph 5 above, but no later than August 1 of each year.
- b. This Agreement may also be terminated by GBCOA by written notice to NA in the event that F&B Service in the Fifth Floor Lounge fails to meet the standards and criteria set out in Paragraph 5 of this Agreement. In the event of termination pursuant to this subparagraph, NA shall immediately pay to GBCOA the pro rated dues for CU-1 for the remainder of the year in which the termination occurs.

**7. Insurance**

During the term of this Agreement NA shall maintain insurance coverage with the following limits:

a.	General Liability	- each occurrence	\$2,500,000
		- general aggregate	\$5,000,000
b.	Automobile Liability	- combined single limit	\$2,000,000
c.	Umbrella Liability	- combined single limit	\$15,000,000
		- aggregate	\$60,000,000

**8. Indemnification**

During the term of this Agreement NA shall defend, indemnify and hold harmless GBCOA, NA its Board of Directors, Officers, and the individual Members thereof, from any

liability with respect to loss or damage, including personal injury, arising from or related in any manner to the F&B Services provided hereunder specifically including, without limitation, claims by or on behalf of members of GBCOA or NA regarding the right of GBCOA and/or Na to enter into this Agreement and the NA's performance of this Agreement. This paragraph applies only with respect to any claim or loss not covered by or in excess of any insurance by GBCOA or NA covering claims or losses occurring during the term of this Agreement.

9. This agreement shall be interpreted in accordance with the laws of the United States Virgin Islands.

10. Except as otherwise expressly provided in this Agreement, all covenants, conditions and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

11. Notice

Any notice required under this Agreement shall be effective upon deposit in United States mail, or by personal delivery directed as follows:

GBCOA: Great Bay Condominium Owners Association < Inc.  
c/o Current President 6900 Great Bay  
St. Thomas, VI 00802

NA: The Neighborhood Association, Inc.  
c/o Current President 6900 Great Bay  
St. Thomas, VI 00802

Dated: 8-9-13

The Neighborhood Association, Inc.

SM Cutrona  
By: Salvatore Cutrona  
President

Dated: August 9, 2013

Great Bay Condominium Owners  
Association, Inc.

John P. Doyle  
By: John Doyle  
President

# EXHIBIT 16

**FIRST AMENDMENT TO  
RESIDENCE OWNERS AGREEMENT**

**BETWEEN**

**THE NEIGHBORHOOD ASSOCIATION, INC.**

**AND**

**GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.**

**THIS AMENDMENT** entered into this 1<sup>ST</sup> day of November 2014, between THE NEIGHBORHOOD ASSOCIATION, INC., a Virgin Islands not for profit corporation, ("NA") and GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC. ("GBCOA"), a Virgin Islands not for profit corporation,

*EW*

**RECITALS**

WHEREAS, GBCOA and NA entered into a certain Residence Owners Agreement dated August 8, 2013 (the "Agreement"); and

WHEREAS pursuant to the Agreement, NA provided certain privileges to GBCOA members for use of that certain premises now called the Grand Palazzo Club ("GPC") owned by NA located on the fifth floor of Building G at Great Bay Condominium located at The Ritz-Carlton Club, St. Thomas; and,

WHEREAS, GBCOA and NA agree that it is in the best interest of the parties to modify the rights and obligations of the parties with respect to their use of GPC; and

WHEREAS NA has borrowed approximately \$155,000 from GBCOA (the "NA Loan"), which NA had agreed to repay in full to GBCOA without interest prior to November 30, 2014, and which amount remains outstanding.

NOW, THEREFORE, in consideration of the entry into this First Amendment by the parties, and for other good and valuable consideration, the receipt and adequacy of which are acknowledged by each party, the parties agree as follows:

1. Article 2 of the Agreement, "Residence Owners Privileges," is hereby amended by substituting the following subparagraph c. therefor, and by adding the following subparagraphs g. and h. thereto:

c. Residence Owners may participate in the breakfast service in GPC on an advance prepayment basis at a cost equal to that paid by NA members, provide such breakfasts are restricted to non-peak hours (7 a.m. to 9 a.m.).

...

g. NA shall provide one of the following benefits, at GBCOA's election, which it shall exercise by notifying NA by October 1, 2014:

(a) a fifteen percent (15%) discount from the published menu prices for meals and for all beverage service, including for bottled wine, for Residence Owners and their guests, which discount would be applied against such persons' charges at the time of use of GPC; or

(b) a payment to GBCOA in a monthly aggregate equal to fifteen percent (15%) of the charges incurred by Residence Owners and their guests during such month for meals and for all beverage service, including for bottled wine (in which case such Residence Owners' charges shall reflect full menu prices).

h. NA shall permit Residence Owners to utilize the wine storage lockers in GPC on an as-available basis without charge.

2. Article 4 of the Agreement, "Charge for Residence Owner Participation," is hereby amended by deleting the first sentence and substituting it with the following: "In consideration of this Residence Owners Agreement, GBCOA shall pay to NA an annual Fee in an amount equal to one-half (1/2) of the annual dues obligation of NA to GBCOA with respect to CU-1.
3. GBCOA agrees that it shall allow NA to defer the repayment of one-half (1/2) of the balance of the NA Loan for one (1) year. Such amount (approximately \$77,500) shall not be due and payable until November 30, 2015. NA confirms its agreement to pay the first half of the NA loan on or before November 30, 2014.

Dated: 10-30-14

The Neighborhood Association, Inc.



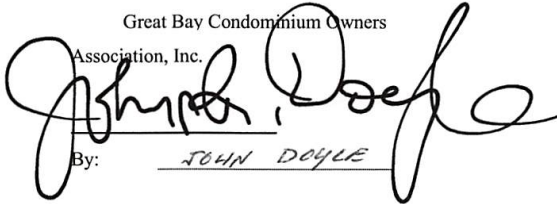
By: SALVATORE M. CUTRONA, SR

Salvatore Cutrona

President

Dated: 10-29-14

Great Bay Condominium Owners  
Association, Inc.



By: JOHN DOYLE

John Doyle

President

# EXHIBIT 17

**SECOND AMENDMENT TO  
RESIDENCE OWNERS AGREEMENT**

**BETWEEN**

**THE NEIGHBORHOOD ASSOCIATION, INC.  
AND**

**GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.**

**THIS SECOND AMENDMENT** entered into this 1<sup>ST</sup> day of November 2015, between THE NEIGHBORHOOD ASSOCIATION, INC., a Virgin Islands not-for-profit corporation, ("NA") and GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC. ("GBCOA"), a Virgin Islands not-for-profit corporation,

**RECITALS**

WHEREAS, GBCOA and NA entered into a certain Residence Owners Agreement dated August 8, 2013 (the "Original Agreement"); and

WHEREAS, the Agreement was amended by the parties on November 1, 2014 (the "First Amendment"); and

WHEREAS pursuant to the Original Agreement as amended by the First Amendment (the "Agreement"), NA provided certain privileges to GBCOA members for use of that certain premises now called the Grand Palazzo Club ("GPC") owned by NA located on the fifth floor of Building G at Great Bay Condominium located at The Ritz-Carlton Club, St. Thomas; and,

WHEREAS, GBCOA and NA agree that it is in the best interest of the parties to modify the rights and obligations of the parties with respect to their use of GPC; and

WHEREAS NA had borrowed approximately \$155,000 from GBCOA (the "NA Loan"), of which NA repaid approximately \$78,000, the balance of which NA had agreed to repay in full to GBCOA without interest prior to November 30, 2015, which remains outstanding.

NOW, THEREFORE, in consideration of the entry into this First Amendment by the parties, and for other good and valuable consideration, the receipt and adequacy of which are acknowledged by each party, the parties agree as follows:

1. Article 2 of the Agreement, "Residence Owners Privileges," is hereby amended by substituting the following subparagraph c. therefor, and by adding the following subparagraphs g. and h. thereto:

- c. Starting on November 6, 2015 and continuing through the 2016 Club Year (ending November 3, 2016), Residence Owners may participate in the breakfast service in GPC on an advance prepayment basis at normal hours and at a cost equal to that paid by NA members through their dues.

...



g. With respect to the 2015 Club Year and the 2016 Club Year, NA shall provide a fifteen percent (15%) discount from the published menu prices for meals and 10% discount for all beverage service, including for liquor and bottled wine, for Residence Owners and their guests, which discount would be applied against such persons' charges at the time of use of GPC.

h. NA shall permit Residence Owners to utilize the wine storage lockers in GPC on an as-available basis without charge.

2. Article 4 of the Agreement, "Charge for Residence Owner Participation," is hereby amended by deleting the first sentence and substituting it with the following: "In consideration of this Residence Owners Agreement, GBCOA shall pay to NA an annual Fee in an amount equal to one-half (1/2) of the annual dues obligation of NA to GBCOA with respect to CU-1.
3. NA acknowledges its obligation to repay GBCOA the balance of the NA Loan (approximately \$77,500) by November 30, 2015.

Dated:

11-1-15

The Neighborhood Association, Inc.

By: SM Cutrona  
Salvatore M. Cutrona, Sr.  
President

Dated:

11-1-15

Great Bay Condominium Owners  
Association, Inc.

By: John Doyle  
John Doyle  
President

# EXHIBIT 18

## HODGE & HODGE

November 11, 2017

Ms. Abigail Chung  
Vice President  
Great Bay Condominium Owners Association, Inc.  
Parcel 4, Estate Nazareth, No. 1 Red Hook Quarter  
6901 Great Bay  
St. Thomas, VI 00802

**DELIVERED : Via Email to abbeychung@msn.com**

**Re: Tender of Conveyance of Title to Unit CU-1 to Great Bay Condominium  
Owners Association**

Dear Ms. Chung:

I have been asked by The Neighborhood Association, Inc., (“NA”) to reply to your email of November 2, 2017, advising that Great Bay Condominium Owners Association, Inc., (“GBCOA”), rejects the tender of title to Unit CU-1, by delivery of an executed deed from NA to GBCOA.

You indicate that the tender has been rejected because it does not comply with the terms of an email you sent to NA on September 11, 2017. However, to clarify, the tender was not effected to comply with the email terms you proposed, but rather was made pursuant to the provisions of the applicable condominium declaration. NA did not find the email terms acceptable, as they were inconsistent with terms that NA believed had been previously agreed upon.

Thus, as the communications between NA and GBCOA about a possible voluntary conveyance of CU-1 did not result in an agreement, NA elected to tender title to the Unit to GBCOA, without conditions, in reliance upon the terms of the governing legal documents of the two entities.

I will briefly summarize the basis for this action.

CU-1 is a lawfully created condominium unit in a condominium complex known as “Great Bay Condominium”, designated a commercial unit rather than a residential unit, in the overall complex. Great Bay was duly established by recording a declaration of condominium, in accord with VI law, on May 31, 2002, with various subsequent amendments and supplements. The separate condominium designated CU-1 was created by the Fifth Amendment to the original

ATTORNEYS AT LAW  
1340 TAARNEBERG, ST. THOMAS, VIRGIN ISLANDS  
PHONE: 340-774-6845 FAX: 340-776-8900  
EMAIL: MARIA@HODGELAWVI.COM

**A.000715**

Declaration, dated June 6, 2006. Certain requirements and provisions applicable to CU-1 were also contained in a Fourth Amendment to the Declaration and a Fourth Amendment to the Supplemental Declaration, also dated June 6, 2006.

The condominium documents that create CU-1, and the corporate documents that specify the authority of NA to act and administer that commercial condominium unit, specifically grant to the Association the authority to convey real property. In particular, the Articles of Incorporation of NA, as is customary with Virgin Islands corporations, expressly recognize the power to “own and convey real and personal property.” (Articles of Incorporation, Article IV). As CU-1 is a condominium constituting real property, NA has the power to convey title to that unit.

Further, NA’s bylaws provide the board of directors of NA has the power to convey real property without the need to obtain its members’ approval, because there is no provision in the Articles or Bylaws that indicates that power is to be exercised exclusively by the members.

Notwithstanding the foregoing, NA took the extraordinary step of submitting the issue to a vote of NA members in a Special Meeting held in St. Thomas on October 30, 2016, where it was almost unanimously (98.7%) approved. In that meeting, **an overwhelming super-majority of the suite interest owners of NA voted 233 FOR (80.90% of all 288 NA members) FOR and 3 (1.04% of all 288 NA members) AGAINST the transfer of the CU-1, to the GBCOA, who's Board was supportive of the deed transfer and was so noted to the GBCOA and NA members. . (Bylaws, Article IV(3)(1)).**

Therefore, NA plainly has the power to convey title to Unit CU-1, as the NA board of directors elects to do so.

In this case, that action has been authorized by the NA board.

Further, GBCOA has both the authority and the obligation to accept title from NA to CU-1. That prospect was expressly envisioned in the creation of the Unit. The power to accept title to property is conferred on GBCOA by its own Articles of Incorporation, a power that is almost universally enjoyed by corporations. However, beyond that general authority, the Declaration of Condominium for GBCOA provides, in the same Fourth Amendment that created Unit CU-1, that the “...Owner of a Commercial Unit may also convey a Commercial Unit to the Association [GBCOA] for no or nominal consideration *without the consent of any Owner or the Association, and the Association shall be obligated to accept such conveyance...*”

NA is aware that the same provision contains a condition that a Commercial Unit “will only be transferred to the Association free of service contracts or other obligations other than as provided in the Declaration, By-laws and Rules and Regulations, all as amended from time to time...” In this instance, the deed was tendered with the only previous service contract having been terminated (copy attached), and the previously applicable deed restriction having been formally

waived, leaving no relevant obligations outstanding. Accordingly, the condition in the Fourth Amendment for this conveyance is satisfied.

Thus, based upon the applicable corporate and condominium documents, GBCOA has the authority and the obligation to accept transfer of title to Unit CU-1, from NA, and NA has tendered title to GBCOA in furtherance of this obligation.

If you believe that NA has misunderstood your position, please contact me. Otherwise, we would ask that you confirm the acceptance by GBCOA of the tender of title by NA to Unit CU-1. However, for the sake of good order, I note that NA considers the tender to have been properly made and to be self-executing and effective, even without a formal statement of acceptance from GBCOA.

Sincerely,



Maria Tankenson Hodge

Cc: Salvatore M. Cutrona, Sr. - President, NA [salcut@comcast.net](mailto:salcut@comcast.net)  
John Doyle, President GBCOA [jdoylemwe@aol.com](mailto:jdoylemwe@aol.com)  
Thomas Doyle, Treasurer GBCOA [tdoyle70@yahoo.com](mailto:tdoyle70@yahoo.com)  
Michael Gick, Secretary GBCOA [mmgick@icloud.com](mailto:mmgick@icloud.com)  
Steve Redan, Director GBCOA [steve@kpmedi.com](mailto:steve@kpmedi.com)

ATTACHMENT:

- 1) AGREEMENT AND TERMINATION OF RESTAURANT LEASE BETWEEN THE NEIGHBORHOOD ASSOCIATION, INC., as Landlord And RESTAURANT GROUP 101, L.L.C., as Tenant, effective 31 day of August, 2017.
- 2) CONDOMINIUM DEED – effective 20 day September, 2017

# EXHIBIT 19

Remick  
3  
10

Book:  
Pages: 0800  
Doc# 2006003725  
Filed & Recorded  
04/11/2006 2:43PM  
WILMA O. HART SMITH  
RECORDER OF DEEDS  
ST THOMAS/ST JOHN  
RECORDING FEE \$ 164.00  
DEED DOC STAMP 2.0 \$ 3,040.00  
PER PAGE FEE \$ 3.00

CONDOMINIUM DEED Doc# 2006003725

THIS INDENTURE, made the 6 day of April, 2006, by and between RC Hotels (Virgin Islands), Inc., a corporation organized and existing under the laws of the Virgin Islands of the United States whose address is c/o The Ritz-Carlton Club, St. Thomas, 6649 Westwood Blvd, Orlando Florida 32821 (hereinafter "Grantor") and SALVATORE CUTRONA, as Individual whose address is 2621 WELSH ROAD, MOHNTON, PA 19540 (hereinafter "Grantee").

WITNESSETH: That the Grantor in consideration of the sum of Ten U.S. DOLLARS (US \$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby grant to Grantee, Grantee's successors and assigns and the heirs of the survivor, the real property described as follows:

The Unit(s) known as Residence Interest No.(s) 5401 - 10 (hereinafter "Residence Interest(s)"), in the Club at Great Bay Condominium, at the property known as Parcel Nos. 4-2, 4-3, 4-4, 4-5, 4-6, 4-7, 5-33A, 4-10 and 4-11 Estate Nazareth, No. 1 Red Hook Quarter, St. Thomas, U.S. Virgin Islands, designated and described as such in the Declaration of Condominium for Great Bay Condominium and the Supplementary Declaration of Condominium for the Club at Great Bay Condominium respectively establishing plans for condominium ownership and interval ownership of said buildings and said property, made by RC Hotels (Virgin Islands), Inc., and the Grantor respectively under the Condominium Act of the Virgin Islands of the United States (Chapter 33, Title 28, Virgin Islands Code), dated May 10, 2002 and recorded in the Office of the Recorder of Deeds for St. Thomas and St. John, U.S. Virgin Islands, on May 31, 2002 as Document No. 2002002741 and 2002002742, respectively, as amended by First Amendment to Declaration dated July 2, 2002 and recorded in the Office of the Recorder of Deeds for St. Thomas and St. John, U. S. Virgin Islands on July 5, 2002 as Document No. 2002003593 and as further amended by Second Amendment to Declaration dated November 12, 2002 and recorded in the Office of the Recorder of Deeds for St. Thomas and St. John, U.S. Virgin Islands on December 6, 2002 as Document No. 2002006963 and as further amended by the Third Amendment to Declaration dated January 7, 2004 and recorded in the Office of the Recorder of Deeds for St. Thomas and St. John, U.S. Virgin Islands on January 7, 2004 as Document No. 2004000046, and as further amended by a Corrective Third Amendment to Declaration dated November 10, 2004, and recorded in the Office of the Recorder of Deeds for St. Thomas and St. John, U.S. Virgin Islands on November 17, 2004 as Document No. 2004009789; and as further amended by a Fourth Amendment to Declaration dated November 15, 2005 and recorded in the Office of the Recorder of Deeds for St. Thomas and St. John, U.S. Virgin Islands on December 15, 2005 as Document No. 2005012779 and as amended by the First Amendment to Supplementary Declaration of Condominium for the Club at Great Bay Condominium dated November 12, 2002 and recorded in the Office of the Recorder of Deeds for St. Thomas and St. John, U.S. Virgin Islands on December 6, 2002, as Document No. 2002006962, and as further amended by the Second Amendment to Supplementary Declaration of Condominium for the Club at Great Bay Condominium dated January 7, 2004 and recorded in the Office of the Recorder of Deeds for St. Thomas and St. John, U.S. Virgin Islands on January 7, 2004 as Document No. 2004000045, and as further amended by a Corrective Second Amendment to Supplementary Declaration of Condominium for the Club at Great Bay Condominium dated November 10, 2004 and recorded in the Office of the Recorder of Deeds for St. Thomas and St. John, U.S. Virgin Islands on November 17, 2004 as Document No. 2004009790 and as further amended by a Third Amendment to Supplementary Declaration of Condominium for the Club at Great Bay Condominium dated November 15, 2005 and recorded in the Office of the Recorder of Deeds for St. Thomas and St. John, U.S. Virgin Islands on December 15, 2005 as Document No. 2005012780 (hereinafter collectively the "Declarations"), as may be subsequently amended.

TOGETHER WITH the Residence Interest's(s)' undivided percentage interest in the common areas and facilities of the Club at Great Bay Condominium (hereinafter the "Common Elements"), as the same may be subsequently amended from time to time, including all easements appurtenant thereto.

TOGETHER ALSO WITH the appurtenances and all the estate and rights of the Grantor in and to the Residence Interest(s)

TOGETHER ALSO WITH all fixtures and permanent equipment used or useful in connection with the above-described Residence(s) of which the Residence Interest(s) is (are) appurtenant and now or hereafter attached to or installed therein.

The above-described Residence Interest(s), together with the appurtenances, rights, and other interests hereinabove described in connection with the Residence Interest(s) now or hereafter vested or attached to or installed in the Residence(s) to which the Residence Interest(s), is (are) appurtenant are hereinafter collectively referred to as the "Property".

SUBJECT TO U.S. Virgin Islands zoning laws and regulations, to real property taxes in the year in which the subject conveyance occurs and for subsequent years thereafter, to covenants, restrictions and easements of record, including a Reciprocal Easement Agreement with Grantor as the same may be amended from time to time to include additional phases of the Club, if any, and to the provisions of the Declarations and of the Bylaws of the Members Association recorded simultaneously with and as part of the

Doc# 2006003725







GOVERNMENT OF  
 THE VIRGIN ISLANDS OF THE UNITED STATES  
 CHARLOTTE AMALIE, ST. THOMAS, V.I. 00801  
 -----0-----  
 DEPARTMENT OF FINANCE  
 TREASURY DIVISION

TO: THE RECORDER OF DEEDS  
 FROM: THE TREASURY DIVISION

IN ACCORDANCE WITH Title 28, SECTION 121 AS AMENDED, THIS IS  
 CERTIFICATION THAT THERE ARE NO REAL PROPERTY TAXES

OUTSTANDING FOR RC HOTELS ( VIRGIN ISLANDS ) INC.  
 Tract #4 Consolidated Naz  
 No. 1 Red Hook Qtr.  
 (PARCEL NO.) 1-07803-0414-00  
 \_\_\_\_\_ ).

TAXES RESEARCHED UP TO AND INCLUDING 2004.

RESEARCHED BY: *Maribel D. Hedrington*  
 Maribel D. Hedrington  
 TITLE: Chief Enforcement  
 DATE: February 22, 2006  
 VERIFIED BY: *Ianthe M. de Alomal*  
 Ianthe M. de Alomal  
 TITLE: Chief, Revenue Collection  
 DATE: February 22, 2006  
 COLLECTOR NO. 8501

Doc# 2006003725

# EXHIBIT **20**

**Fwd: Phone message**

GBCOA St. Thomas Board of Directors <boardstthomas@aol.com>

Fri 11/19/2021 11:59 AM

To: David Wentzel <dwentzel@wentzellaw.com>

Begin forwarded message:

**From:** "Leighton-herrmann, Marsha" <Marsha.Leighton-Herrmann@ritzcarlton.com>  
**Date:** November 4, 2021 at 11:17:29 AM AST  
**To:** Caroline john <carolinejohn7@gmail.com>  
**Cc:** "boardstthomas (boardstthomas@aol.com)" <boardstthomas@aol.com>  
**Subject:** RE: Phone message

The additional bill you received as a suites owner was sent by the Great Bay Association Board, so though I have knowledge that it was sent, it isn't being handled by the management company and the site team cannot provide any input or guidance.

Feel free to contact the Great Bay COA board who sent the billing at ([boardstthomas@aol.com](mailto:boardstthomas@aol.com)); or you may contact The Neighborhood Association Board at [naboardstthomas@gmail.com](mailto:naboardstthomas@gmail.com) with any questions you may have.

Regards,  
Marsha

Marsha Leighton-Herrmann, CHAE, CPA  
Director of Finance  
The Ritz-Carlton Club, St. Thomas  
6910 Great Bay, St. Thomas, VI 00802  
M +1 407.256.1808  
O +1 340.693.3811  
[marsha.leighton-herrmann@ritzcarlton.com](mailto:marsha.leighton-herrmann@ritzcarlton.com)

THE RITZ-CARLTON CONFIDENTIAL AND PROPRIETARY INFORMATION

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**From:** Caroline john <carolinejohn7@gmail.com>  
**Sent:** Wednesday, November 3, 2021 10:40 PM

**A.000723**

**To:** Leighton-herrmann, Marsha <Marsha.Leighton-Herrmann@ritzcarlton.com>  
**Subject:** Re: Phone message

Thanks for your reply. I was looking for guidance on paying the assessment requested of suites owners. It appears the rec commendation is not to pay.  
Caroline John

Sent from my iPhone

On Nov 3, 2021, at 4:54 PM, Leighton-herrmann, Marsha  
<[Marsha.Leighton-Herrmann@ritzcarlton.com](mailto:Marsha.Leighton-Herrmann@ritzcarlton.com)> wrote:

Good Day Ms. John,

I received your phone message from yesterday, reviewed your account, and saw that your payment was made. Please let me know how I can help you, or what questions I can answer for you. Because this time of year is busy helping with billing and payment questions, it's best for us to communicate by email when at all possible. I appreciate your understanding and look forward to hearing from you if I can still be of assistance.

Regards,  
Marsha

Marsha Leighton-Herrmann, CHAE, CPA  
Director of Finance  
The Ritz-Carlton Club, St. Thomas  
6910 Great Bay, St. Thomas, VI 00802  
[marsha.leighton-herrmann@ritzcarlton.com](mailto:marsha.leighton-herrmann@ritzcarlton.com)

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**A.000724**

# EXHIBIT **21**

## RC St. Thomas, LLC

November 12, 2021

**VIA E-Mail**

Board of Directors  
Great Bay Condominium Owners Association, Inc.  
c/o 6910 Great Bay  
St. Thomas, U.S. Virgin Islands  
Attn: Abbey Chung, President of GBCOA

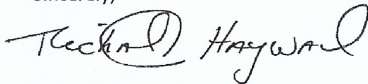
Dear Ms. Chung,

It was a pleasure speaking with you on Thursday, November 11, regarding the "special billing" to the Neighborhood Association, Inc. members relating to the Commercial Unit 1 in Great Bay Condominium, and RC St. Thomas, LLC's remittance of \$28,993.47 associated with payment of such "special billing" for interests owned. As you will have noted, the amount remitted did not include any interest or penalties.

As you may know, the billing instructions did not provide information for the wiring of funds and after making a telephone call to Concord, we received incorrect wiring instructions and once again had to contact them for proper instructions. In that regard, our payment was wired on November 9 and received on November 10. We are therefore respectfully asking the board to waive the interest and penalties.

We look forward to hearing the board's decision on this request.

Sincerely,



Richard J. Hayward  
SVP, Vacation Ownership

Cc: Great Bay Condominium Owners Association, Inc. Board of Directors

**A.000726**

# EXHIBIT **22**

## Contact

[www.linkedin.com/in/richard-hayward-182500b](http://www.linkedin.com/in/richard-hayward-182500b) (LinkedIn)

## Top Skills

Negotiator  
Resorts  
Negotiation

# Richard Hayward

Sr Vice President, Vacation Ownership at Marriott Vacations Worldwide Corporation  
Laguna Niguel

## Experience

Marriott Vacations Worldwide Corporation  
Sr Vice President, Vacation Ownership  
October 2018 - Present (3 years 2 months)  
Newport Beach Ca

Marriott Vacation Club  
Vice President Asset Management  
2007 - Present (14 years)  
Southern California

Responsible for Managing MVC portfolio of Assets; Western US and Hawaii.

Marriott Vacation Club International  
15 years 9 months

RVP Revenue Management  
January 2002 - September 2007 (5 years 9 months)

Responsible for Revenue Growth for all MVC projects in the Western US and Hawaii

Regional Vice President Europe  
July 1997 - December 2001 (4 years 6 months)

Responsible for Business development and growth of MVC European operation

Vice President Resort operations  
June 1994 - July 1997 (3 years 2 months)

Western US

Responsible for MVC operations and Growth Western US and Hawaii

General Manager  
January 1992 - June 1994 (2 years 6 months)  
Vail Co

General manager for Marriott's Streamside at Vail

Marriott International





6 years

Director of Finance  
1988 - 1992 (4 years)  
Beverly Hills Ca

Responsible for Hotel opening and sale of Hotel to investors.

Corporate Finance  
1986 - 1988 (2 years)

Director of finance and worked on Finance team to develop accounting process for new brands; Courtyard and Fairfield Inn

Marriott LAX  
Director of Finance  
1982 - 1986 (4 years)  
Los Angeles California

Asst Dir of Finance for 1000 room hotel. responsible for all accounting staff and support

---

## Education

Oxford Brookes University  
Hotel Management, Hospitality lodging · (1999 - 2001)

Bentley College  
Finance, Accountancy and International Finance · (1977 - 1981)

Walpole high school  
· (1974 - 1977)

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

GREAT BAY CONDOMINIUM OWNERS  
ASSOCIATION, INC., )  
Plaintiff, )  
vs. ) Civil No.  
THE NEIGHBORHOOD ASSOCIATION, INC., ) ST-18-CV-768  
Defendant. )  
\_\_\_\_\_ )

**T-R-A-N-S-C-R-I-P-T**  
**(Continued - Preliminary Injunction Hearing)**

**December 8, 2021**

BEFORE: HONORABLE RENEE GUMBS CARTY  
Judge Presiding

APPEARANCES: W. MARK WILCZYNSKI, ESQ. &  
DAVID WENTZEL, ESQ.  
Law Office of W. Mark Wilczynski, P.C.  
Palm Passage, Ste. C-20-22  
St. Thomas, VI 00802

(Attorneys for the Plaintiff)

MARIA TANKENSON HODGE, ESQ.  
Hodge & Hodge  
1340 Taarneberg  
St. Thomas, VI 00802

(Attorney for the Defendant)

**I N D E X**

WITNESSES

<u>DEFENDANT</u>	<u>Dir</u>	<u>Crs</u>	<u>Redir</u>	<u>Recrs</u>
Marsha Leighton-Hermann	13	24	50	54
Salvatore Cutrona, Sr.	57	128	190	212

EXHIBITS

<u>DEFENDANT</u>	<u>Id/Md</u>	<u>Adm</u>
Ex. C Notice of 10/1/21 from Ritz-Carlton Club Re: Being "locked out" in case of Failure to pay Great Bay Invoices within 10 days	16	23
Ex. B Memo from Great Bay to NA members dated 10/22/21	58	--
Ex. R Sixth Amendment to Supplementary Declaration of Condominium for the Club at Great Bay Condominium	78	81
Ex. S Seventh Amended and Restated Reservation Procedures for Ritz-Carlton Club Membership Program	83	--
Ex. E Third Amendment to Supplementary Declaration of Condominium	111 via Stip	
Ex. F Fourth Amendment to Declaration of Condominium	111 via Stip	
Ex. G Fifth Amendment to Supplementary Declaration of Condominium	111 via Stip	
Ex. H Demand letter to Great Bay to rescind invoices for dues for	112	115

**I N D E X**

<u>EXHIBITS</u>		<u>Id/Md</u>	<u>Adm</u>
<u>DEFENDANT</u>			
	CU-1 dated 11/3/21		
Ex. Q	Letter dated December 3, 2021 from GBCOA board of directors to Ritz-Carlton Club, St. Thomas members	123	128
<u>PLAINTIFF</u>			
Ex. 20	E-mail exchange between Marsha Leighton-Hermann and Caroline John	34	41
Ex. 3	Fifth Amendment to Condominium Declaration	101	102
Ex. 15	NA and GBCOA Residence Access Agreement	178	186
Ex. 16	NA and GBCOA Residence Access Agreement First Amendment	178	186
Ex. 17	NA and GBCOA Residence Access Agreement Second Amendment	178	186
No. 9	RCC St. Thomas Declaration of Condominium	187	190
<u>ARGUMENTS</u>			
	Plaintiff - 230		
	Defendant - 239		

1           [....continuation of court hearing.]

2           THE CLERK: Civil jury  
3 calendar for Wednesday, December 8th, year  
4 2021. **Great Bay Condominium Owners**  
5 **Association, Inc. versus The Neighborhood**  
6 **Association, Inc.**

7           ATTORNEY WILCZYNSKI: Good  
8 morning, Your Honor. Mark Wilczynski on  
9 behalf of the plaintiff Great Bay  
10 Condominium Owners Association.

11          THE COURT: Good morning.

12          ATTORNEY WENTZEL: Good  
13 morning, Your Honor. David Wentzel also  
14 on behalf of the plaintiff Great Bay  
15 Condominium Owners Association.

16          THE COURT: Good morning.

17          ATTORNEY TANKENSON HODGE:  
18 Good morning, Your Honor. Maria Tankenson  
19 Hodge for the defendant The Neighborhood  
20 Association, Inc. I'm not seeing my  
21 client on the Zoom --

22          THE COURT: Is it Mr.  
23 Cutrona? He's there.

24          ATTORNEY TANKENSON HODGE:  
25 Very good. Thank you, Your Honor.

1 THE COURT: Yes, he's there.  
2 Good morning, Mr. Cutrona.  
3 Good morning, Attorney Hodge.

4 MR. SALVATORE CUTRONA: Good  
5 morning, Your Honor.

6 THE COURT: Yes? Oh, okay.  
7 And, Mr. Doyle, you are on  
8 behalf of the defendants; correct?

9 MR. THOMAS DOYLE: I am the  
10 corporate representative for the plaintiff  
11 GBCOA.

12 THE COURT: I'm sorry. For  
13 the plaintiff. Sorry. For Great Bay.  
14 All right. Okay.

15 Good morning, Miss  
16 Leighton-Hermann.

17 MS. MARSHA LEIGHTON-HERMANN:  
18 Good morning, Your Honor.

19 THE COURT: Okay. Good  
20 morning.

21 So, Attorney Hodge, you want to  
22 say something?

23 ATTORNEY TANKENSON HODGE:  
24 Yes, Your Honor. Thank you. So when we  
25 adjourned last time the Court may recall

1 that the matter before us was the  
2 Defendant's Exhibit C, which was a  
3 memorandum issued by Marsha  
4 Leighton-Hermann for the Ritz-Carlton  
5 Club, and the Court had wanted to hear  
6 directly from the author of that memo and  
7 not just Mr. Cutrona's impression of it.  
8 And Miss Leighton-Hermann is -- has  
9 appeared this morning after consultation  
10 with her employer's lawyers, and she does  
11 so from the states. We weren't able to  
12 subpoena, but she appears this morning  
13 voluntarily.

14 I did actually also say to her  
15 attorney, Your Honor, and I relay this  
16 request to the Court now, that I would ask  
17 the Court if you would permit her lawyer  
18 to observe by having a copy of this Zoom  
19 invitation, not to speak to the Court or  
20 address the Court, obviously, because she  
21 is not admitted in the Virgin Islands, but  
22 simply to observe the proceedings. And I  
23 make that request to the Court now. If  
24 Your Honor would permit it I'll forward a  
25 Zoom invitation to that lawyer. If you

1 are not incline to do so, I indicated I'd  
2 report to the lawyer what took place.

3 THE COURT: Any objections,  
4 Attorney Wilczynski or Attorney Wentzel?

5 ATTORNEY WILCZYNSKI: No,  
6 Your Honor.

7 THE COURT: Okay. Right. I  
8 have no problem with it, Attorney Hodge.  
9 So, if you can send that link now that  
10 would be great. If you cannot I'll have  
11 Miss Duggins do it.

12 ATTORNEY TANKENSON HODGE:  
13 I'll try, judge, right now if you'll give  
14 me a moment.

15 THE COURT: Okay. Sure.

16 **(Brief pause in record.)**

17 ATTORNEY WILCZYNSKI: I  
18 assume that this is Attorney Margaret  
19 Rolando; is that correct?

20 ATTORNEY TANKENSON HODGE:  
21 No. The attorney's name is Veronique  
22 Lanthier. She is an attorney from  
23 Marriott, and she is the attorney who we  
24 spoke with about allowing Miss  
25 Leighton-Hermann to appear this morning.



1                   ATTORNEY WILCZYNSKI: Thank  
2 you.

3                   ATTORNEY TANKENSON HODGE: I  
4 need a moment, judge, to find that  
5 connection.

6                   THE COURT: Okay. No  
7 problem.

8                   **(Brief pause in record.)**

9                   Okay, so in the meantime, I've  
10 received a copy of your additional exhibit  
11 for the hearing scheduled for today.

12                   Have you received a copy,  
13 Attorney Wilczynski? It is the letter  
14 dated December 3rd.

15                   ATTORNEY WILCZYNSKI: Yes,  
16 Your Honor.

17                   THE COURT: Okay.

18                   ATTORNEY WENTZEL: And, Your  
19 Honor, we also filed additional exhibits  
20 yesterday, has the Court seen those?

21                   THE COURT: I see the notice  
22 of the filing but I'm not sure if I saw --  
23 I haven't seen the actual exhibits.

24                   ATTORNEY WENTZEL: Mark, can  
25 you have your assistant e-mail those to

1 the judge's clerk?

2 ATTORNEY WILCZYNSKI: Yes,  
3 that's fine.

4 THE COURT: Okay, send it to  
5 Miss Duggins, please.

6 ATTORNEY WILCZYNSKI: To Miss  
7 who?

8 THE COURT: Miss Duggins. Do  
9 you have her --

10 ATTORNEY WILCZYNSKI: I'm  
11 sorry. Right, right. No problem. I  
12 thought I heard Blevins.

13 THE COURT: Is it lengthy?  
14 Is it a lot of information?

15 ATTORNEY WILCZYNSKI: No.

16 ATTORNEY WENTZEL: No. There  
17 are several exhibits but they are all very  
18 short, two or three pages, some of them  
19 are one page.

20 THE COURT: Okay. Very well.  
21 No, I think I received them.

22 ATTORNEY WENTZEL: They are  
23 exhibits -- Plaintiff's Exhibits 15 to 22.  
24 And we file with that an amended exhibit  
25 list that contains all of our exhibits, 1

1 through 22.

2 THE COURT: One through 22.  
3 Okay. Okay, I have it. I see. I have  
4 it. Thank you.

5 ATTORNEY WILCZYNSKI: So I  
6 don't need to have my paralegal send it,  
7 Your Honor?

8 THE COURT: No. No. The  
9 last page that I have is the resume of  
10 Richard Hayward, is that it?

11 ATTORNEY WILCZYNSKI: That's  
12 correct, Your Honor.

13 THE COURT: Okay. So I have  
14 it. Thank you.

15 ATTORNEY WILCZYNSKI: You're  
16 welcome.

17 THE COURT: So, I'm going to  
18 wait for Attorney Lanthier to appear in  
19 the waiting room.

20 ATTORNEY TANKENSON HODGE:  
21 Thank you, judge.

22 THE COURT: You're welcome.

23 **(Brief pause in record.)**

24 Do you want to send her a text  
25 message?

1                   ATTORNEY WENTZEL: Your  
2 Honor, if I may?

3                   THE COURT: Yes.

4                   ATTORNEY WENTZEL: I assume  
5 that we're gonna proceed with  
6 cross-examination of Mr. Cutrona before we  
7 hear from another witness, is that  
8 correct?

9                   THE COURT: My understanding  
10 from the last hearing was that we couldn't  
11 continue with Mr. Cutrona because it was  
12 more about the effect of the tourism part  
13 or the commercial -- the activities --

14                  ATTORNEY WENTZEL: Yes.

15                  THE COURT: -- that occur  
16 over at Great Bay. So we had stopped for  
17 the very purpose of Miss Leighton-Hermann  
18 testify. I know it's in the midst of his  
19 testimony, but we couldn't go any further.  
20 That's my recollection.

21                  ATTORNEY WENTZEL: It was my  
22 understanding, Your Honor, that Mr.  
23 Cutrona was finished and could not go any  
24 further. If that's incorrect, then I  
25 assume we'll resume with what he has left

1 and then have his cross and then the new  
2 witness.

3 ATTORNEY TANKENSON HODGE: So  
4 I would ask the Court to allow Miss  
5 Leighton-Hermann to testify first. It's  
6 already sort of asking an accommodation on  
7 her part for her to be here. She doesn't  
8 represent a party. She's appearing  
9 remotely, and I don't expect her testimony  
10 to be lengthy. But I do think it would be  
11 appropriate as an accommodation to allow  
12 her to testify and then let Mr. Cutrona  
13 continue. There's nothing about that that  
14 would be extraordinary, and it's certainly  
15 consistent with the circumstances under  
16 which we adjourned.

17 ATTORNEY WENTZEL: I don't  
18 have a problem with it, Your Honor.

19 THE COURT: Okay. Very well.  
20 Very well. Thank you. Okay, Attorney  
21 Lanthier is not appearing in the waiting  
22 room, so --

23 ATTORNEY TANKENSON HODGE:  
24 Can we ask Miss Leighton if she has a  
25 phone number for her and I'll send a text

Direct - Ms. Leighton-Hermann

1 and then we could begin and maybe she can  
2 just join us.

3 THE COURT: Yes. Miss  
4 Leighton?

5 MISS LEIGHTON: Your Honor, I  
6 don't but I have sent her an e-mail to ask  
7 her if she received it, the link, I have  
8 not heard back from her.

9 ATTORNEY TANKENSON HODGE: I  
10 sent an e-mail as well. So maybe we  
11 should go ahead and begin with Miss  
12 Leighton and then let her join us when she  
13 gets her messages.

14 THE COURT: Yes. Let's  
15 proceed. Okay, thank you.

16 Miss Brin.

17 THE CLERK: Yes, judge.

18 THE COURT: Raise your right  
19 hand to be sworn, please, Miss  
20 Leighton-Hermann.

21 **MARSHA LEIGHTON-HERMANN,**  
22 after having first been duly sworn as a  
23 witness, testifies as follows:

24 **DIRECT EXAMINATION**

25 **BY ATTORNEY TANKENSON HODGE:**

**Direct - Ms. Leighton-Hermann**

1           **Q.** Good morning. Would you state  
2 your full name for the record, please.

3           **A.** Marsha Leighton-Hermann.

4           **Q.** And, Miss Leighton-Hermann,  
5 where do you reside, which state?

6           **A.** I reside in Merritt Island,  
7 Florida.

8           **Q.** Florida. And where are you  
9 employed?

10          **A.** I'm employed for the  
11 Ritz-Carlton Hotel Company.

12          **Q.** And what is your position with  
13 the Ritz-Carlton Hotel Company?

14          **A.** Director of Finance.

15          **Q.** And could you just describe  
16 briefly for the Court what the  
17 responsibilities are of the director of  
18 finance.

19          **A.** In my capacity I represent  
20 both the -- I do work for both the  
21 Ritz-Carlton Club St. Thomas, which  
22 includes the Great Bay Condominium Owners  
23 Association and The Neighborhood  
24 Association.

25          **Q.** And just briefly, what sorts

1 of things do you do for those two  
2 associations?

3 **A.** Manage the finances and their  
4 budget, produce budgets, prepare two  
5 audits. General accounting type of work  
6 for each association.

7 **Q.** And does that include on some  
8 occasions at least communicating with  
9 their members about invoices for  
10 assessments or common charges?

11 **A.** Yes, ma'am.

12 ATTORNEY TANKENSON HODGE:  
13 May we have permission to show the witness  
14 Defendant's Exhibit C, Your Honor?

15 THE COURT: Yes, you may.

16 ATTORNEY TANKENSON HODGE: I  
17 had given her a paper copy, judge.

18 THE COURT: I'm sorry?

19 ATTORNEY TANKENSON HODGE: I  
20 said the witness has a paper copy if  
21 that's easier. I think I wasn't a master  
22 of the shared screen last time, so I don't  
23 know if everyone has a paper copy of  
24 Exhibit C.

25 ATTORNEY WENTZEL: Exhibit C?



1 Okay.

2 THE COURT: That's fine. But  
3 I still enabled you though, just to let  
4 you know.

5 ATTORNEY TANKENSON HODGE:  
6 Let me see if I can put it up then.

7 **(Defendant's Exhibit C shared.)**

8 **BY ATTORNEY TANKENSON HODGE:**

9 Q. Miss Leighton-Hermann, do you  
10 recognize this document that's on the  
11 screen? I think you have a paper copy  
12 marked Exhibit C?

13 A. Yes, I do.

14 Q. And what is it, please?

15 A. This is the letter that's sent  
16 out each year with the annual billing  
17 assessments to the Great Bay Condominium  
18 Owners Association members, and it's just  
19 advising them of their next budget and  
20 what the billing amount is along with  
21 their options for payment and the  
22 consequences if payment is not received  
23 timely.

24 Q. And what is the date of this  
25 letter?

Direct - Ms. Leighton-Hermann

1           **A.** October 1st, 2021.

2           **Q.** Do you see your name there as  
3 the author of the document?

4           **A.** Yes, ma'am.

5           **Q.** Okay. And did you, in fact,  
6 send this memo to all of the Great Bay  
7 members including Neighborhood Association  
8 members on or about October 1st of this  
9 year?

10           **A.** It was -- I presented it to  
11 our third-party billing vendor Concord,  
12 and they did send the letter, yes.

13           **Q.** And so is this a true copy of  
14 the letter that was sent at your request?

15           **A.** Yes, ma'am.

16           **Q.** So I would like to direct your  
17 attention to the first paragraph of the  
18 letter. After the first paragraph and the  
19 first sentence, were you transmitting with  
20 this memo an actual invoice?

21           **A.** Yes, there was an invoice  
22 that, again, was prepared by our  
23 third-party Concord, so there was an  
24 individual invoice that was attached as  
25 page three. And then behind that were the

**Direct - Ms. Leighton-Hermann**

1 documents of the prepared and approved  
2 budget by the GBCOA board.

3 **Q.** And was that an invoice for  
4 each member's annual assessment of their  
5 maintenance fee or common charges?

6 **A.** Yes, ma'am, it was individual  
7 to each other.

8 **Q.** And directing your attention  
9 now further down on the document. Did you  
10 explain to the members of the association  
11 who were receiving your message how they  
12 could pay these assessments?

13 **A.** Yes, ma'am.

14 **Q.** And did you also explain to  
15 them what financial consequences would  
16 apply if their payment was late?

17 **A.** Yes, I did.

18 **Q.** And basically what was that?

19 **A.** After the invoice is due on  
20 November the 2nd, and there is a ten-day  
21 grace period through November the 12th to  
22 make sure that all payments are received,  
23 and after that point they receive a 15  
24 percent penalty on any balance that's due,  
25 and -- along with a nine percent per annum

1 finance charge.

2 Q. Okay. And directing your  
3 attention to paragraph five of the letter,  
4 you referenced a lockout at all locations  
5 until delinquent balances are paid. Would  
6 you tell us what that means?

7 A. Okay. What that means is,  
8 after November the 12th a list goes from  
9 our third-party vendor Concord to Member  
10 Services, which is the department that  
11 handles all member accounts, and anyone  
12 who has not paid their account is locked  
13 so they cannot use their time or  
14 reservations at the Ritz-Carlton Club or  
15 any other Ritz-Carlton destination club  
16 after that time until the balance is paid.

17 Q. And when you say, "cannot use  
18 their time," just for common  
19 understanding, these members have interval  
20 interest but not a hundred percent  
21 ownership of the residence; right? So  
22 when you say they can't use their time,  
23 you mean they can't use or occupy their  
24 residence or suite while they are  
25 delinquent, is that right?

1           **A.** Yes, ma'am, that's correct.

2           **Q.** So I would like to move a  
3 little further here on to the next page of  
4 your memo and direct your attention to the  
5 two paragraphs that we've highlighted in  
6 yellow. The first highlighted paragraph  
7 begins, *the late payment fee assessment is*  
8 *15 percent on the unpaid balance per*  
9 *Section 25 of the Association Rules and*  
10 *Regulations.* Do you see that?

11           **A.** Yes, ma'am.

12           **Q.** Okay. And you also reference  
13 there in that paragraph as authority for  
14 this assessment the Supplementary  
15 Declaration of Condominium?

16           **A.** Yes, ma'am.

17           **Q.** And you give the members a  
18 link that they can click on to see that  
19 you actually have authority to tell them  
20 that they owe these amounts and that  
21 they'll have to pay this interest rate if  
22 they don't pay on time; correct?

23           **A.** That is correct.

24           **Q.** And then directing your  
25 attention to the last paragraph on this

Direct - Ms. Leighton-Hermann

1 page, you also provide the members that  
2 you're writing to with this assessment  
3 information on the consequences of not  
4 paying the assessment what the authority  
5 is for that. Do you see that?

6 **A.** Yes, I do.

7 **Q.** So could you read the last  
8 sentence of that final paragraph.

9 **A.** *If you do not timely make*  
10 *payment on all amounts due and owing of*  
11 *common charges for the lock-out, the*  
12 *lock-out will be implemented and shall*  
13 *remain in place until all amounts due and*  
14 *owing including interest and late fees --*  
15 *late charges are paid in full.*

16 **Q.** And just also to clarify,  
17 these individuals that you're sending this  
18 memo to don't have, like, a metal key that  
19 lets them into their residence or suite;  
20 is that correct?

21 **A.** That's correct. Okay, they  
22 have a reservation very similar to if you  
23 were at a hotel. So they check-in, they  
24 are provided a key to the unit at that  
25 time.

Direct - Ms. Leighton-Hermann

1           **Q.** And if they don't -- if they  
2 are not current in all these common  
3 charges as you have described they don't  
4 get the key?

5           **A.** That is correct.

6           **Q.** And do the persons that manage  
7 the desk at the resort have access to the  
8 records on whether or not the owners have  
9 paid their common charges and assessments  
10 in full?

11          **A.** Yes, they do. Not in terms of  
12 the detail of it, but they know that they  
13 are locked out.

14          **Q.** So they are either paid in  
15 full in which case they can get in, or  
16 they're delinquent in which case they are  
17 locked out, is that it?

18          **A.** Right. And the front office  
19 has access to knowing that they are locked  
20 out.

21          **Q.** Okay. Now I wanted to also  
22 ask you this, is this memo unique to the  
23 2021 invoice you were sending with it, or  
24 is this the same procedure that applied to  
25 assessments for maintenance fees, annual

1 assessments, before and after this?

2 **A.** It was not unique to it, no.  
3 This letter was prepared in 2010 when we  
4 first started the -- it was prepared in  
5 2010 when we first started this type of  
6 billing system.

7 **Q.** So the same rules that you  
8 were describing in this memo would apply  
9 to failure to pay an annual assessment the  
10 year before or the year after or future  
11 years; is that right?

12 **A.** Yes, ma'am, that is correct.

13 ATTORNEY TANKENSON HODGE:  
14 Your Honor, I would like to move the  
15 admission of Defendant's Exhibit C.

16 THE COURT: Any objections?

17 ATTORNEY WENTZEL: No, Your  
18 Honor.

19 THE COURT: All right.  
20 Defense Exhibit C is admitted.

21 **(Defendant's Exhibit C admitted.)**

22 ATTORNEY TANKENSON HODGE:  
23 That's all I have for this witness, Your  
24 Honor.

25 THE COURT: Okay. Thank you.



1 Attorney Wilczynski or Attorney  
2 Wentzel.

3 ATTORNEY WENTZEL: Thank you,  
4 Your Honor. Can --

5 THE COURT: Do you still want  
6 the exhibit on the screen?

7 ATTORNEY WENTZEL: Not at the  
8 moment. I'll ask Mr. Wilczynski to put it  
9 back up in a minute, but not at the  
10 present.

11 THE COURT: Okay. All right.  
12 You may proceed.

13 **CROSS-EXAMINATION**

14 **BY ATTORNEY WENTZEL:**

15 **Q.** Good morning, Miss  
16 Leighton-Hermann.

17 **A.** Good morning.

18 **Q.** My name is David Wentzel and I  
19 represent the Great Bay Condominium Owners  
20 Association. You testified that you are  
21 employed by the Ritz-Carlton Hotel  
22 Company; is that correct?

23 **A.** It's one of the branches --  
24 yes, it's their -- the part is Marriott  
25 International.

Cross - Ms. Leighton-Hermann

1           **Q.** All right. That entity that  
2           you are referring to as your employer, it  
3           has many different iterations and  
4           affiliates; correct?

5           **A.** Yes, that's correct.

6           **Q.** That's the same entity,  
7           generally speaking, as the Management  
8           Company which it's sometimes referred to  
9           as; correct?

10          **A.** The Management Company --  
11          there's different levels of it, yes. The  
12          operator is The Ritz-Carlton Virgin  
13          Islands, Inc., which is the Management  
14          Company, the operating company at the site  
15          that actually I'm employed by through the  
16          Ritz-Carlton Hotel Company paid by  
17          Marriott International.

18          **Q.** Okay. And that entity does  
19          the day-to-day management and  
20          administration of the Great Bay  
21          Condominium; correct?

22          **A.** Yes, sir.

23          **Q.** And it serves as the managing  
24          agent, I believe you said, both for the  
25          GBCOA and for The Neighborhood

Cross - Ms. Leighton-Hermann

1 Association; correct?

2 A. Yes, sir.

3 Q. And you manage the finances  
4 for both of those entities, yes?

5 A. That's correct, yes.

6 Q. All right. And Exhibit C,  
7 Defendant's Exhibit C, this letter that  
8 you wrote pertains to the regular annual  
9 dues that all owners at the Great Bay  
10 Condominium pay; correct?

11 A. Yes, sir. That's correct.

12 Q. That include the suites owners  
13 that are members of The Neighborhood  
14 Association, but also all of the other  
15 members of Great Bay Condominium  
16 Association; correct?

17 A. That is correct.

18 Q. All right. And every year the  
19 assessments for the condominium property  
20 as a whole are sent out to all of the  
21 members; correct?

22 A. Yes, sir.

23 Q. And that's what Exhibit --  
24 Defendant's Exhibit C is referring to;  
25 correct?

Cross - Ms. Leighton-Hermann

1           **A.** Yes, sir. That is correct.

2           **Q.** And those invoices are handled  
3 by the Management Company; correct?

4           **A.** Through a third-party vendor,  
5 yes.

6           **Q.** Okay. But it's the Management  
7 Company that arranges for the invoices to  
8 be created and to be sent out; correct?

9           **A.** Yes. Correct.

10          **Q.** It's not the Great Bay  
11 Condominium Owners Association board of  
12 directors that handles and manages the  
13 regular annual dues; correct?

14          **A.** That is correct.

15          **Q.** All right. And the letter  
16 that's Defendant's Exhibit C is not  
17 referring to the CU-1 assessments that  
18 were sent out after these invoices that  
19 are the subject of the case that's before  
20 the court; correct?

21          **A.** That is correct.

22          **Q.** All right. And if you look at  
23 the exhibit, you mentioned that there is a  
24 budget attached --

25          **A.** Yes.

1           **Q.** -- to Defendant's Exhibit C,  
2 to the cover letter, that's the third  
3 page.

4                   Could you pull that up, Mark.

5                   ATTORNEY WILCZYNSKI:  
6 Hopefully you have that or do you have a  
7 view of the ocean? You have that exhibit?

8                   ATTORNEY WENTZEL: Yeah.

9                   **(Document shared.)**

10                  THE COURT: I think it's the  
11 third page.

12                  ATTORNEY WENTZEL: Are you  
13 able to page forward -- there it is.

14                  Miss Leighton-Hermann, you see  
15 what's on the screen here, it's the third  
16 page of Defendant's Exhibit C, can you see  
17 that?

18                  **A.** Yes, I can.

19                  **Q.** And this is the budget for the  
20 annual operating expenses of the Great Bay  
21 Condominium as a whole; correct?

22                  **A.** That is correct.

23                  **Q.** And the assessments that are  
24 referred to in the letter that you  
25 testified about, in Defendant's Exhibit C,

**Cross - Ms. Leighton-Hermann**

1 these are the expenses that make up the  
2 general annual dues that you sent out with  
3 this letter; correct?

4 **A.** That is correct. Yes.

5 **Q.** And there is no assessment  
6 related to the commercial unit CU-1 in  
7 this budget; correct?

8 ATTORNEY TANKENSON HODGE: So  
9 I'm gonna object to that -- I'm gonna  
10 object to that, Your Honor, I don't think  
11 this document says anything about what is  
12 assessed, and I don't think this witness  
13 should be expected to answer that.

14 **BY ATTORNEY WENTZEL:**

15 **Q.** Miss Leighton --

16 THE COURT: But I see  
17 Commercial Unit, CU-1, at the very top  
18 across from operating expenses.

19 ATTORNEY TANKENSON HODGE:  
20 Right. But the question that I understood  
21 Mr. Wentzel was asking the witness to  
22 answer was, if there was no assessment for  
23 the commercial unit referred to in this  
24 letter.

25 **Q.** Okay. I believe you already

1 -- let me -- I think you already  
2 testified, Miss Leighton-Hermann, that you  
3 understand the subject of the matter  
4 that's currently before the Court are  
5 assessments for CU-1 for maintenance fees  
6 for 2017 through 2021. You are aware of  
7 that; correct?

8 **A.** Yes.

9 **Q.** And those assessments were  
10 handled and managed by the board of  
11 directors of the Great Bay Condominium  
12 Association; correct?

13 **A.** I'm not sure I understand the  
14 question.

15 **Q.** Well, you testified a few  
16 moments ago that your employer, the  
17 Management Company, is responsible for  
18 handling and generating the regular annual  
19 dues invoices that are sent out to all the  
20 members; correct?

21 **A.** Yes, that is correct,  
22 including the CU-1.

23 **Q.** Okay. And the particular CU-1  
24 expenses that are the subject of this case  
25 relate to the years 2017 through 2021, you

Cross - Ms. Leighton-Hermann

1 know that right?

2 **A.** Yes, I do.

3 **Q.** Okay. Because starting in  
4 2017 and continuing all the way to the  
5 present, The Neighborhood Association has  
6 not invoiced its members for CU-1  
7 maintenance fees; correct?

8 **A.** That is correct.

9 **Q.** All right. And you know that  
10 because you've been involved year after  
11 year in the creation of The Neighborhood  
12 Association budget, yes?

13 **A.** Yes, I have.

14 **Q.** And every year prior to 2017  
15 the -- well, let me backup. You also are  
16 responsible for the final administration  
17 and approval of the annual budget for  
18 GBCOA; correct?

19 **A.** Yes, sir.

20 **Q.** And prior to 2017 the budget  
21 process worked like this, GBCOA would  
22 create a budget for its annual expenses,  
23 yes?

24 **A.** Yes.

25 **Q.** And a line item in that budget



Cross - Ms. Leighton-Hermann

1 would be CU-1 maintenance fees, yes?

2 **A.** Yes. They would be direct --  
3 the maintenance fees would be calculated  
4 the same way --

5 **Q.** Okay. And then The  
6 Neighborhood Association would take that  
7 line item from the GBCOA budget and  
8 include it in The Neighborhood  
9 Association's budget for that year;  
10 correct?

11 **A.** That is correct.

12 **Q.** And The Neighborhood  
13 Association issued a second set of  
14 assessments for CU-1 to the members of The  
15 Neighborhood Association; correct?

16 **A.** That is correct.

17 **Q.** All right. That stopped in  
18 2017, yes?

19 **A.** Yes, sir.

20 **Q.** All right. And that's cause  
21 there's a dispute over the -- who has to  
22 pay these assessments, right?

23 **A.** I --

24 ATTORNEY TANKENSON HODGE:  
25 Well, I object to that. I don't know if

1 this witness --

2 **BY ATTORNEY WENTZEL:**

3 Q. Do you know why it stopped?

4 THE COURT: Sustained. Okay.

5 Okay, you can answer the second  
6 question, Miss Leighton, do you know why?

7 THE WITNESS: I believe there  
8 is a dispute over ownership, and therefore  
9 it's not clear who owes the money.

10 Q. Okay. And the CU-1  
11 assessments for 2017 to 2021 that were not  
12 issued by NA to its members, those you  
13 understand are what's at issue in this  
14 case before the Court where you're here  
15 testifying right now; correct?

16 A. Yes, sir.

17 Q. And the Defendant's Exhibit C,  
18 nothing in that exhibit, whether it's the  
19 cover letter or any other part of it,  
20 relates to the specific CU-1 assessments  
21 that are at issue in this case, true?

22 ATTORNEY TANKENSON HODGE: So  
23 I object to the form of that question,  
24 Your Honor, the witness has testified  
25 about how these procedures work in

1 general, and I think that question is  
2 misleading.

3 **BY ATTORNEY WENTZEL:**

4 Q. Does that --

5 THE COURT: Sustained.

6 Q. Is that question misleading --  
7 all right. Are the CU-1 assessments that  
8 the GBCOA billed to the suite owners on  
9 October 20 -- well, let me back it up and  
10 do it differently. The annual general  
11 assessments in Defendant's Exhibit C were  
12 sent out to all of the members on October  
13 1; correct?

14 A. Yes.

15 Q. All right. And then later in  
16 October there was a second set of invoices  
17 for CU-1 assessments that were sent out  
18 only to the members of The Neighborhood  
19 Association; correct?

20 A. I can't verify that because I  
21 had nothing to do with it.

22 Q. Okay. Let's take a look at  
23 Plaintiff's Exhibit 20.

24 **(Plaintiff's Exhibit 20 shared.)**

25 ATTORNEY WILCZYNSKI: You

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1 should have Exhibit 20 in front of you.

2 **BY ATTORNEY WENTZEL:**

3 Q. Can you see that, Miss  
4 Leighton-Hermann?

5 A. Yes, I can.

6 Q. You are familiar with this  
7 e-mail; correct?

8 A. Yes, I am.

9 Q. All right. It's an e-mail  
10 from you to Caroline John dated November  
11 4, 2021; correct?

12 A. Yes, it is.

13 Q. All right. And in this e-mail  
14 you are actually responding to an e-mail  
15 that Miss John sent you; correct?

16 A. Yes, I am.

17 ATTORNEY WENTZEL: All right,  
18 can you page to the next page, Mark.

19 What we're looking at now is an  
20 e-mail that you sent on November 3rd to  
21 Miss John; correct?

22 A. Yes.

23 Q. All right. And in your e-mail  
24 you say, "Good day Ms. John, I received  
25 your phone message from yesterday,

**Cross - Ms. Leighton-Hermann**

1 reviewed your account, and saw that your  
2 payment was made." Did I read that  
3 correctly?

4 **A.** Yes, sir.

5 **Q.** And you're talking here about  
6 the invoice for the general annual dues  
7 that are the subject of Defendant's  
8 Exhibit C; correct?

9 **A.** I believe I am, yes.

10 **Q.** All right. And you say,  
11 "Please let me know how I can help you, or  
12 what questions I can answer for you."  
13 Correct?

14 **A.** Yes.

15 ATTORNEY WENTZEL: All right.  
16 And then if we scroll up, Mark, we can see  
17 Miss John's response to you.

18 THE WITNESS: I see that.

19 **BY ATTORNEY WENTZEL:**

20 **Q.** Okay. She says, and she wrote  
21 that same day November 3, "Thanks for your  
22 reply. I was looking for guidance on  
23 paying the assessment requested of suites  
24 owners." That's a reference to a  
25 different set of assessments; correct?

Cross - Ms. Leighton-Hermann

1           **A.** Yes, it was.

2           **Q.** And what assessments is that a  
3 reference to?

4           **A.** I assume that was the billing  
5 that she received from the GBCOA for  
6 specific to the CU-1 unit.

7           **Q.** Okay. So you are aware that  
8 the GBCOA issued a separate set of  
9 invoices to the suite owners for CU-1  
10 assessments; correct?

11           **A.** I'm aware of it. I just said  
12 I could not verify that it was done or how  
13 it was done or any of the information  
14 regarding that.

15           **Q.** Correct. Because you had no  
16 involvement in it at all; right?

17           **A.** That is correct.

18           **Q.** And the management company,  
19 your employer, had no involvement in it;  
20 correct?

21           **A.** That is correct.

22           **Q.** Okay. And let's scroll up a  
23 little more. The last thing she request,  
24 Miss John, is for input or guidance that  
25 you can provide her with these second set

1 of invoices; correct?

2 **A.** That is correct.

3 **Q.** All right. And then you  
4 respond to her, can you read what you  
5 wrote?

6 **A.** Part of it's covered here just  
7 above the -- "The additional bill you  
8 received" --

9 **Q.** No, no. It's okay, you can  
10 see it all. We'll scroll there.

11 **A.** Okay. "The additional bill  
12 you received as a suites owner was sent by  
13 the Great Bay Association board" --  
14 Unfortunately, my pictures are covering  
15 what comes after that. *Though I have*  
16 *knowledge it was sent it isn't being*  
17 *handled by the management company and the*  
18 *site team cannot provide any input or*  
19 *guidance.*

20 **Q.** Okay. And that was your  
21 position when any members of The  
22 Neighborhood Association inquired of you  
23 about the CU-1 assessments that were sent  
24 after the general assessments; correct?

25 **A.** Yes, sir. That is correct.

**Cross - Ms. Leighton-Hermann**

1           **Q.** All right. And the Management  
2 Company required the GBCOA to enter into a  
3 separate contract with Concord, the  
4 billing company, for these CU-1  
5 assessments; correct?

6           **A.** That's my understanding. Yes.

7           **Q.** And you know that because you  
8 handled the finances for GBCOA and you  
9 know they had to pay a substantial fee to  
10 Concord for that; correct?

11          **A.** Yes, they did.

12          **Q.** Okay. And that's because the  
13 management company told GBCOA it was not  
14 gonna issue these invoices for CU-1  
15 assessments for 2017 to 2021 because of  
16 the dispute; correct?

17          **A.** That's my understanding. I'm  
18 not the one that provided that message to  
19 them.

20          **Q.** Okay. And as you said, you  
21 had no involvement and have no personal  
22 knowledge of any issues related to the  
23 CU-1 assessments that are the subject of  
24 this case before the court; correct?

25          **A.** I'm not sure of the question.



Cross - Ms. Leighton-Hermann

1 I mean, I have knowledge of what's going  
2 on, but I'm not positive of what your  
3 question is.

4 Q. Okay. You are aware of it but  
5 you weren't involved with it; correct?

6 A. That is correct.

7 Q. And that's what you're telling  
8 Miss John; correct?

9 A. That is correct.

10 Q. And that's what you told other  
11 members of The Neighborhood Association  
12 who e-mailed you or called you and said,  
13 what should I do with these CU-1  
14 assessments; correct?

15 A. I believe that's the case. I  
16 didn't hear from many of them directly as  
17 she was requesting, and some of them I've  
18 ignored.

19 Q. Some you ignored?

20 A. Uh-hum. The ones who wanted  
21 to get refunds.

22 Q. Okay. But, do you recall --  
23 Can you close this one out,  
24 Mark?

25 ATTORNEY WILCZYNSKI: I can

1 do that. Are we moving the admission at  
2 this time?

3 ATTORNEY WENTZEL: Yes.

4 THE COURT: Okay.

5 ATTORNEY WILCZYNSKI: Your  
6 Honor, we would move the admission of this  
7 exhibit.

8 THE COURT: Any objections,  
9 Attorney Hodge?

10 ATTORNEY TANKENSON HODGE:  
11 No, Your Honor.

12 THE COURT: Okay.  
13 Plaintiff's Exhibit 20 is admitted.

14 **(Plaintiff's Exhibit 20 admitted.)**

15 **BY ATTORNEY WENTZEL:**

16 **Q.** Do you know who Jaime  
17 Alfernberg(phonetic) is, Miss  
18 Leighton-Hermann?

19 **A.** I know he's a member that I've  
20 had communications with, yes.

21 **Q.** I'm sorry. You're right, it's  
22 Mr. Jaime Alfernberg. And he's a member  
23 of The Neighborhood Association, you are  
24 aware of that; correct?

25 **A.** I believe he is, yes.

Cross - Ms. Leighton-Hermann

1           **Q.** And he also e-mailed you  
2 asking for guidance about the billing he  
3 received for the CU-1 dues; correct?

4           **A.** I'd have to go back -- this is  
5 a time of year when I receive many, many  
6 e-mails. So, I would have to go back and  
7 look. I wasn't prepared to respond to --  
8 about e-mail, so, I -- I don't know. Like  
9 I say, I respond to many members this time  
10 of year and I can't say I recall them all.

11           **Q.** Okay. But do you recall  
12 having an e-mail exchange with Mr.  
13 Alvinberg (phonetic) about these CU-1  
14 assessments?

15           **A.** I believe I did, yes.

16           **Q.** Okay. And is it your  
17 recollection that, like you did with the  
18 other e-mail which was Defendant's Exhibit  
19 20, you also told Mr. Alfenberg that the  
20 management company had nothing to do with  
21 the billing for the CU-1 assessments;  
22 correct?

23           **A.** I would have to review the  
24 e-mail, but I believe I did.

25           **Q.** All right. That's your best

**Cross - Ms. Leighton-Hermann**

1 recollection, correct, not maybe so much  
2 the exact words, but that was the gist of  
3 what you told him?

4 **A.** I believe it was, yes.

5 **Q.** All right. Now, the financial  
6 consequences of the failure to pay the  
7 general annual dues that you talked about  
8 from Defendant's Exhibit C, those  
9 financial consequences were not in place  
10 for these CU-1 assessments, were they?

11 **ATTORNEY TANKENSON HODGE:**  
12 Object to the form of the question.  
13 Object to this witness' ability to answer  
14 that question. I don't --

15 **THE COURT:** Overrule.

16 You can answer, Miss  
17 Leighton-Hermann.

18 **THE WITNESS:** I don't know.

19 **BY ATTORNEY WENTZEL:**

20 **Q.** Okay. You have no knowledge  
21 that the lockout procedures did apply to  
22 the CU-1 assessments; correct?

23 **A.** They did not get to that date,  
24 so I don't know what would have happened  
25 at that time.

Cross - Ms. Leighton-Hermann

1           **Q.** Okay. Well, let me make sure  
2 I understand what you're saying, you don't  
3 know if they had gotten to that date where  
4 they were passed due if lock-out would  
5 have applied; correct?

6           **A.** That is correct.

7           **Q.** Now you testified on direct  
8 about the mechanism for lock-out and that  
9 the Ritz-Carlton entity that operates the  
10 condominium, they know who hasn't paid  
11 their general annual dues on time;  
12 correct?

13          **A.** That's correct.

14          **Q.** Right. And how do they get  
15 that information?

16          **A.** It's transmitted to them from  
17 the third-party vendor Concord Servicing  
18 to -- directly to the system that Member  
19 Services manages.

20          **Q.** And do you know how that  
21 information gets put into the reservation  
22 system so that when somebody comes to the  
23 front desk to get their key for the  
24 reservation the front desk people know  
25 they are locked out? Do you know how that

1 happens?

2 **A.** It's part of the Member  
3 Services system.

4 **Q.** Okay. But do you know the  
5 specific steps that it takes for the front  
6 desk people to be able to know if somebody  
7 subject to lockout because they didn't pay  
8 their annual general dues?

9 **A.** If they look up the  
10 reservations for the people that are  
11 incoming this week, for an example, they  
12 would see that -- a particular reservation  
13 marked in black instead of -- but I don't  
14 know -- I don't know how the system does  
15 it, it's a system oriented process. I'm  
16 not aware of the steps within the system.

17 **Q.** Okay. And do you know whether  
18 any steps to put in the system information  
19 about who paid these CU-1 assessments?

20 ATTORNEY TANKENSON HODGE: I  
21 don't understand the question.

22 THE COURT: Okay. Repeat the  
23 question, Attorney Wentzel, please.

24 **BY ATTORNEY WENTZEL:**

25 **Q.** Do you know one way or another

**Cross - Ms. Leighton-Hermann**

1 whether any steps had been taken for the  
2 system to know if someone didn't pay the  
3 CU-1 assessments and would be subject to  
4 lockout? Do you know if that happened?

5 **A.** It did not happen to this  
6 point because it didn't reach that date.  
7 I'm not sure what was going to be setup.  
8 I don't know what would have happened had  
9 you gotten to that process.

10 **Q.** Okay. You don't know what  
11 would have happened; correct?

12 **A.** Not the -- system-wise I don't  
13 know what was setup between the parties to  
14 know what they were -- what would have  
15 happened systemically at that date.

16 **Q.** Okay. And no one from --  
17 before I ask that, you have regular  
18 communications with the GBCOA board of  
19 directors; correct?

20 **A.** Yes, sir.

21 **Q.** All right. And you interact  
22 with them on a, at least, a weekly basis;  
23 correct?

24 **A.** Not necessarily, no.

25 **Q.** Okay. How often would you say

Cross - Ms. Leighton-Hermann

1 you interact with them?

2 **A.** A few times a month. It  
3 depends on the time of the year. It  
4 depends on what's going on.

5 **Q.** Okay. Did you have any  
6 interactions with anyone from the board of  
7 directors of the Great Bay Condominium  
8 Association about these CU-1 assessments  
9 that was sent out in October 2021?

10 **A.** I did not have any  
11 communication directly from them regarding  
12 the assessments that were sent out after  
13 October the 3rd.

14 **Q.** Okay. And no one from the  
15 Great Bay Condominium Owners Association  
16 board of directors gave you any  
17 instructions to implement lockout  
18 procedures if somebody from The  
19 Neighborhood Association didn't pay these  
20 CU-1 dues; correct?

21 **A.** They did not give it to me,  
22 no.

23 **Q.** All right. And you are not  
24 aware of them communicating that direction  
25 to anybody else at the management company,



1 are you?

2 **A.** Not that I'm personally aware  
3 of, no.

4 **Q.** And before you came here to  
5 testify today, did you have any  
6 discussions with Mr. Cutrona about your  
7 testimony and what you would say?

8 **A.** No.

9 **Q.** Did you have any discussions  
10 with Attorney Hodge about that subject?

11 **A.** Not about specifically what I  
12 should say, no.

13 **Q.** No. Okay. Let me be more  
14 general then, did you have any discussions  
15 with Mr. Cutrona before you appeared here  
16 today about the fact that you would be  
17 appearing and testifying?

18 **A.** He advise me that the judge  
19 had asked that I be part of this process,  
20 yes.

21 **Q.** Okay. And when did he tell  
22 you that?

23 **A.** I don't have an exact date. I  
24 don't recall.

25 **Q.** Well --

Cross - Ms. Leighton-Hermann

1           **A.** Shortly after your last  
2 hearing I would say.

3           **Q.** Sometime in the last week or  
4 two; right?

5           **A.** Yes. Right. Yes.

6           **Q.** Okay. And what was it Mr.  
7 Cutrona told you about why the judge  
8 wanted you to appear?

9           **A.** To verify the information in  
10 the letter that I wrote out of October the  
11 1st 2021.

12           **Q.** Okay. And did you understand  
13 that Mr. Cutrona wanted you to talk about  
14 lock-out procedures?

15           **A.** Not specifically, no.

16           **Q.** So when you were asked about  
17 Defendant's Exhibit C in this letter, it  
18 was a surprise to you?

19           **A.** No. I mean, I received the  
20 letter, I know what's in it, so I assumed  
21 I would have to respond to any of the  
22 information that I had written in that  
23 letter.

24           **Q.** Okay. Did anybody ask you  
25 whether you could say whether lock-out

1 procedures applied to these CU-1  
2 assessments that were issued separately by  
3 the GBCOA board of directors?

4 **A.** No, sir.

5 **Q.** You didn't tell anyone from  
6 The Neighborhood Association whether Mr.  
7 Cutrona or Attorney Hodge, that you  
8 couldn't say one way or another whether  
9 lockout applied, is that --

10 **A.** I was never asked; I never  
11 said anything.

12 **Q.** Okay. They didn't ask you and  
13 you didn't say anything about it; correct?

14 **A.** That is correct.

15 ATTORNEY WENTZEL: Okay.  
16 That's all I have for the witness, Your  
17 Honor.

18 THE COURT: All right. Very  
19 well. Thank you, Attorney Wentzel.

20 Any redirect, Attorney Hodge?

21 ATTORNEY TANKENSON HODGE:  
22 Yes, Your Honor, I have a few questions.

23 **REDIRECT EXAMINATION**

24 **BY ATTORNEY TANKENSON HODGE:**

25 **Q.** Miss Leighton-Hermann, am I

1 correct in understanding that Great Bay  
2 originally requested the management  
3 company --

4 THE COURT: One second.  
5 Attorney Wilczynski, I'm going to mute  
6 you. Okay.

7 Repeat the question, Attorney  
8 Hodge, please.

9 **BY ATTORNEY TANKENSON HODGE:**

10 Q. Am I correct in understanding  
11 that the Great Bay Association originally  
12 contacted the Management Company,  
13 contacted your company, and wanted you to  
14 be involved in issuing the invoices for  
15 the CU-1 annual assessments for 2017 to  
16 2021, and that your company declined to be  
17 involved with that?

18 A. Yes.

19 Q. And that is the reason why  
20 they ended up issuing these invoices  
21 directly through the third-party vendor  
22 that you use for all the other invoices;  
23 is that right?

24 A. That's my understanding, yes.

25 Q. And am I correct in

1 understanding that when the Management  
2 Company, your company, declined to issue  
3 invoices to The Neighborhood Association  
4 members for CU-1, that Great Bay decided  
5 to go ahead and do that on its own?

6 **A.** That would be my  
7 understanding, yes.

8 **Q.** And when you said to Attorney  
9 Wentzel that you didn't reach the point of  
10 determining whether the lock-out  
11 procedures would apply to people who  
12 failed to pay these annual assessments  
13 sent to The Neighborhood Association  
14 members for CU-1 because we didn't reach  
15 that point, are you referring to the fact  
16 that the Court entered the temporary  
17 restraining order before the date when  
18 those payments were to become delinquent  
19 so they never actually became delinquent?

20 **ATTORNEY WENTZEL:** Object to  
21 the form, Your Honor, long paraphrase of  
22 what her testimony was.

23 **THE COURT:** Overrule.

24 **BY ATTORNEY TANKENSON HODGE:**

25 **Q.** Could you answer for us?

1           **A.** I think my point was, I  
2 believe a lock-out date was at some point  
3 into November that we hadn't reached, and  
4 that decision wasn't mine to make. I was  
5 not part of that -- would not have been a  
6 part of that decision making process, it  
7 would have been -- it would have been the  
8 Management Company, the Ritz -- RC St.  
9 Thomas, LLC management company that would  
10 have really help make that decision more  
11 so myself. And we had not gotten to the  
12 date of lockout and I don't know that  
13 anyone had made a formal decision or  
14 response as to what our position would  
15 have been.

16           **Q.** So just for clarity when you  
17 say, you hadn't gotten the date of  
18 lock-out, the date that when the payments  
19 would have been due, I think, under the  
20 invoices was November 22nd, and before  
21 that there was a TRO entered, so to your  
22 understanding was it correct that you  
23 never reached the point of having to  
24 determine whether failure to pay those  
25 Great Bay invoices would trigger the

1 consequence of the lock-out?

2 **A.** That's my understanding. Yes.

3 ATTORNEY TANKENSON HODGE:

4 Very well. That's all I have for the  
5 witness.

6 THE COURT: All right. Thank  
7 you.

8 Any recross?

9 ATTORNEY WENTZEL: Yes, Your  
10 Honor.

11 **RECROSS EXAMINATION**

12 **BY ATTORNEY WENTZEL:**

13 **Q.** Miss Leighton-Hermann, you  
14 just said that you believe the lock-out  
15 date had been set or reached for some day  
16 in November with respect to the CU-1  
17 invoices, is that what I heard you say?

18 **A.** I'm not sure what the date  
19 was. I do not know what the date was. I  
20 believe it was in late November sometime.

21 **Q.** What's the basis for your  
22 belief?

23 **A.** I don't recall anything  
24 specific, it was just something probably  
25 from conversation somewhere. I don't have

**Recross - Ms. Leighton-Hermann**

1 the specific knowledge as to what the  
2 lock-out day for The Neighborhood -- for  
3 the CU-1 invoice was.

4 **Q.** And you don't have any  
5 knowledge whether in fact a lockout date  
6 had ever been established for the CU-1  
7 invoices, isn't that true?

8 **A.** That's true, and my -- that is  
9 true.

10 **Q.** Okay.

11 **A.** My assumption was after the  
12 due date or after the grace period ended.

13 **Q.** But that's just speculation on  
14 your part; correct?

15 **A.** That is correct, sir.

16 **Q.** All right. And when you  
17 testified a minute ago that the Management  
18 Company would have been involved in the  
19 decision to apply lock-out to these CU-1  
20 invoices, that's just your speculation  
21 too; correct?

22 **A.** Yes. I'm not saying that they  
23 would have made the decision, they made --  
24 it wouldn't have been -- it would not have  
25 been a decision I would have made. I



1 would have been told what might be  
2 happening, but that would have been either  
3 a discussion between them and the Great  
4 Bay Association or they would have stayed  
5 out of it entirely and move from there.

6 Q. You are just speculating about  
7 what might have happened but you don't  
8 know; correct?

9 A. Yes, sir.

10 Q. But you don't know?

11 A. Yes, sir.

12 ATTORNEY WENTZEL: That's  
13 all, Your Honor.

14 THE COURT: All right. Very  
15 well. Thank you, Miss Leighton-Hermann.

16 THE WITNESS: Thank you.

17 THE COURT: Attorney Hodge,  
18 may she be excused or --

19 ATTORNEY TANKENSON HODGE:  
20 Yes. Yes, Your Honor.

21 THE COURT: Okay. Miss  
22 Leighton-Hermann, feel free to stay or you  
23 can leave if you wish.

24 THE WITNESS: Okay, fine. I  
25 will leave. Thank you very much.

Direct - Mr. Cutrona

1 Everyone have a good day.

2 THE COURT: Yes, you too.

3 And thank you very much. Thank you.

4 Your next witness, Attorney  
5 Hodge.

6 ATTORNEY TANKENSON HODGE: We  
7 would resume now with Mr. Cutrona.

8 THE COURT: Very well. Mr.  
9 Cutrona, raise your right hand to be  
10 sworn, please.

11 **SALVATORE CUTRONA, SR.,**  
12 after having first been duly sworn as a  
13 witness, testifies as follows:

14 **DIRECT EXAMINATION**

15 **BY ATTORNEY TANKENSON HODGE:**

16 Q. Good morning again, Mr.  
17 Cutrona. I think when we adjourned your  
18 testimony at the previous hearing we were  
19 talking about Respondent's Exhibit B,  
20 which was a memorandum issued by Great Bay  
21 in connection with the invoice that --  
22 it's Exhibit A.

23 Could we have permission, Your  
24 Honor, to show the witness Exhibit B  
25 again?

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THE COURT: Yes, you may.  
**(Defendant's Exhibit B shared.)**

ATTORNEY TANKENSON HODGE:  
Can people see the exhibit?

THE COURT: Yes.

**BY ATTORNEY TANKENSON HODGE:**

**Q.** So, Mr. Cutrona, showing you again what has been marked as Defendant's Exhibit B, do you recognize this?

**A.** I do.

**Q.** And just briefly again, what is it?

**A.** This is a memo issued by the Great Bay Condominium Associations to all residential and suite owners -- or to the suite owners with their invoice for the CU-1 assessment.

**Q.** Okay. And what is the date of this memo, again?

**A.** The date of the memo issued by Great Bay is October 22nd, 2021.

**Q.** And is that the same date as your invoice for the assessment, the annual assessment, for maintenance fees for the unit for those years?

Direct - Mr. Cutrona

1           **A.** It is. The statement date on  
2 the invoice is October 20th, 2021.

3           **Q.** And directing your attention  
4 to the fourth page of this exhibit, after  
5 explaining that the assessment was being  
6 issued to the members of Neighborhood  
7 Association, did the memorandum provide  
8 any indication of what would occur if  
9 owners -- if the members didn't make the  
10 payment within 30 days?

11           **A.** As the last sentence of that  
12 four-page letter reads, and I'm reading  
13 from the letter shown on the screen. "If  
14 the invoice is not paid in full within 30  
15 days the Member Association will take  
16 further action as provided for in the  
17 declarations."

18           **Q.** And is there a footnote that  
19 gives the NA members an opportunity to see  
20 specifically what they are talking about  
21 in the declarations that would explain the  
22 consequences of not paying?

23           **A.** Yes. It -- the footnote  
24 refers to the paragraph immediately before  
25 that, if you scroll down on the screen

Direct - Mr. Cutrona

1 that's indented, which I assume means it  
2 was taken verbatim from the declarations.  
3 And, I don't know if you want me to read  
4 that, but it does enhance the point I just  
5 made from the single sentence where it  
6 reads, quote, "Each member of a Residence  
7 is personally liable for all assessments  
8 made against the Residence pursuant to  
9 this declaration, and the Members  
10 Association may bring an action for a  
11 money judgment against the delinquent  
12 Member to collect all sums due the Members  
13 Association, including interest, late  
14 charges, costs, and reasonable attorney  
15 fees. No Member may withhold payment of  
16 any regular or special assessment or any  
17 portion thereof because of any dispute  
18 which may exist between that Member and  
19 the Members Association, the directors of  
20 the Members Association, the manager  
21 retained by the Members Association or the  
22 Declarant or among any of them, but rather  
23 each Member shall pay all assessments when  
24 due pending resolution of any dispute."  
25 And it's footnoted with, one, and that

Direct - Mr. Cutrona

1 footnote reads at the bottom of the last  
2 page, "All Declarations and Amendments  
3 quoted or otherwise referred in this  
4 letter are accessible at myritzcarltonclub  
5 dot come," which is the members website.  
6 *After logging in, go to the bottom right*  
7 *of the screen and under News From the Club*  
8 *click on Your Club. You will then see a*  
9 *menu on the left side of the screen called*  
10 *My Membership click on the Minutes and*  
11 *Documents. Anyone experiencing difficult*  
12 *logging in should contact Member Services.*  
13 End of the footnote.

14 Q. And so on this same page the  
15 indication is, that the enclosure that  
16 came with this four-page communication was  
17 the invoice for maintenance assessments  
18 for CU-1 for a period of fours years;  
19 correct?

20 A. That's correct.

21 Q. Did you, in fact, look at the  
22 condominium declarations and website that  
23 is referenced in this memo from Great Bay  
24 regarding the consequences of failing to  
25 pay the assessments on time?

Direct - Mr. Cutrona

1           **A.** Well, I did, because, and it  
2 is voluminous, but if you go to my  
3 affidavit, question number ten, I tried  
4 for the Court's benefit just to summarize  
5 those sections, all of them, as I could  
6 find them in a read, that refer to the  
7 footnote on the fourth page of GBCOA's  
8 billing transmittal, and the documents  
9 referred to on the Member's website. And  
10 I could read the -- all those sections if  
11 you would like me to, but they are in my  
12 affidavit points out in detail.

13           **Q.** And, in fact, as you sit here  
14 today can you confirm to the Court that  
15 the summary of what those declarations  
16 show in paragraph ten of your affidavit is  
17 true and correct?

18           **A.** It is true and correct, and  
19 explains all the variations of the  
20 situations where delinquency could occur,  
21 and everything that the board or the  
22 association in that case contain against  
23 the individual member.

24           **Q.** So, just for one example in  
25 your affidavit of a consequence of not

Direct - Mr. Cutrona

1 paying this assessment on time, I wanted  
2 to ask you about the one that refer to the  
3 Association's privilege to have grant  
4 delinquent members time in their condos.  
5 Could you explain what that means?

6 ATTORNEY WENTZEL: May I have  
7 a reference for what's being referred to  
8 now, judge?

9 THE COURT: I'm sorry,  
10 Attorney Wentzel, what did you say?

11 ATTORNEY WENTZEL: Can I --  
12 I'm a little disoriented as to what  
13 document or part of his affidavit he's  
14 being asked about now.

15 ATTORNEY TANKENSON HODGE: He  
16 said paragraph ten. And I'm asking him  
17 now about a portion of paragraph ten that  
18 appears on page five.

19 ATTORNEY WENTZEL: Thank you.

20 THE WITNESS: You want me to  
21 continue?

22 **BY ATTORNEY TANKENSON HODGE:**

23 Q. I wanted to ask you to go  
24 ahead and explain to us, if you would, the  
25 significance of the provision that you



Direct - Mr. Cutrona

1 found in these reference declarations to  
2 the Association's privilege to rent  
3 delinquent members time in their condos,  
4 but what is the significance of that?

5 ATTORNEY WENTZEL: Object to  
6 form.

7 THE COURT: Okay. Just -- I  
8 -- just one minute, please. Just one  
9 minute.

10 **(Brief pause in record.)**

11 Okay, Attorney Hodge, where  
12 exactly -- refresh my memory, please, as  
13 to exactly where is his affidavit, was it  
14 attached to the moving papers for the TRO?

15 ATTORNEY TANKENSON HODGE:  
16 Yes, Your Honor. It was attached to the  
17 motion for the temporary restraining  
18 order. I can probably put it up on the  
19 screen for the Court if you wish.

20 THE COURT: Okay. Just one  
21 minute. I think I may --

22 ATTORNEY TANKENSON HODGE:  
23 Dated November 12th, Your Honor.

24 THE COURT: November 12th?  
25 Okay.

Direct - Mr. Cutrona

1 ATTORNEY TANKENSON HODGE:

2 Correct.

3 THE COURT: Okay. I have it.

4 ATTORNEY TANKENSON HODGE:

5 Very well. Thank you. So, shall I repeat  
6 the question, Your Honor, or what would be  
7 the most --

8 THE COURT: Repeat the  
9 question but rephrase it so there's no  
10 objection again, please.

11 **BY ATTORNEY TANKENSON HODGE:**

12 Q. So, Mr. Cutrona, you've  
13 indicated that you did go ahead and review  
14 the provisions of the various condominium  
15 declaration amendments and supplements  
16 that were cited in the footnote to this  
17 memo, and I asked you -- I was asking you  
18 now to tell us what -- what those  
19 condominium documents said, if anything,  
20 about the Association's privilege to rent  
21 a delinquent member's time in their  
22 condos?

23 A. Again, referring to my  
24 affidavit and point number ten for  
25 clarity. In that section I write very

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1 specifically, the Ritz-Carlton -- the  
2 Sixth Amendment to the Supplementary  
3 Declaration Article 6 Subsection 6.4  
4 covers the membership program. And then a  
5 little later down I also call to the  
6 Court's attention, the Sixth Amendment to  
7 the Supplementary Declaration also  
8 addresses the Association's privilege to  
9 rent delinquent Members time in their  
10 condos. Both of those sections of the  
11 Declaration, Supplementary Declaration,  
12 and Sixth Amendment to it deal with  
13 rental. And being very specific in that  
14 section it states the GBCOA board has the  
15 right to rent allocated residence interest  
16 who are more than 60 days delinquent in  
17 paying GBCOA assessments, end of quote.

18 It also makes a second point in  
19 the two documents, if after becoming --  
20 getting current, a member finds that GBCOA  
21 rented it, the Member would have no right  
22 to use it. I think those are the clearest  
23 egregious steps that, unfortunately, could  
24 be put against an individual suite owner  
25 who may have missed the date of required

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1 for payment of November 20th.

2 ATTORNEY WENTZEL: Your  
3 Honor, could we have the witness identify  
4 where in paragraph ten it says that?

5 THE COURT: Yes. I'm looking  
6 for it myself.

7 So exactly where are you reading  
8 from, Mr. Cutrona, looking at paragraph  
9 ten? Is it paragraph ten page three?

10 THE WITNESS: Yes, it's on  
11 page three. Now, the detailed text that I  
12 read I didn't put in my affidavit because  
13 of length, but it's in Supplementary  
14 Declaration Article 6 of Section 4 on the  
15 membership program. And it's repeated  
16 again in the Sixth Amendment to  
17 Supplementary Declaration, which says both  
18 areas address the Association privilege to  
19 rental equal member time in their condo.  
20 The extracts that I quoted I did not put  
21 in the affidavit just because of length of  
22 -- and being sensitive to the length of  
23 the affidavit. But what I read --

24 ATTORNEY WENTZEL: Your  
25 Honor, I would like to request that the

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1 document that he read from, which he said  
2 is not included in paragraph ten of this  
3 affidavit, that that be made of record so  
4 we can see what he's quoting if he's  
5 quoting it accurately.

6 THE WITNESS: I think they  
7 already are, counsel, because the Sixth  
8 Amendment to the Supplementary  
9 Declaration, I believe, is an exhibit  
10 maybe even you submitted already, and --

11 THE COURT: So what -- where  
12 is that exhibit? Where is the Sixth  
13 Amendment's -- where is the exhibit that  
14 contains the Sixth Amendment that you are  
15 referring to?

16 ATTORNEY TANKENSON HODGE: I  
17 don't know if that document is actually an  
18 exhibit. Some of the amendments were made  
19 exhibits, but I have no objection to  
20 adding it as an exhibit. The fact that  
21 the witness has referenced it in his  
22 testimony is because of the fact that the  
23 memo from Great Bay recited that the -- it  
24 was relying on the provisions in the  
25 declaration which could be retrieved at

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1 this website, and the witness is  
2 testifying that he reviewed them at  
3 website.

4 ATTORNEY WENTZEL: Your  
5 Honor, my issue is --

6 ATTORNEY TANKENSON HODGE: I  
7 indicate I have no objection to making it  
8 an exhibit if that's desired.

9 THE COURT: Okay. Thank you,  
10 Attorney Hodge.

11 Attorney Wentzel.

12 ATTORNEY WENTZEL: My issue  
13 with it, Your Honor, is that the best  
14 evidence rule. I would like the exhibit  
15 to be made of record and that we can all  
16 look at it while Mr. Cutrona quotes from  
17 it.

18 ATTORNEY TANKENSON HODGE:  
19 Well, I don't think that I would be in a  
20 position to instantly provide it and put  
21 it up. It's probably within the documents  
22 that Great Bay has, so perhaps you all  
23 have it.

24 THE WITNESS: Here is the  
25 document --

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1 THE COURT: Okay. So let me  
2 understand the essence of this portion of  
3 testimony. The essence now, basically, is  
4 that there's no issue with respect to a  
5 lock-out, but the issue now is that the  
6 GBCOA can rent the units -- can rent the  
7 Member's units and therefore the members  
8 will not have access to their units based  
9 upon the amendments in the declaration?

10 ATTORNEY TANKENSON HODGE:  
11 No. So, Your Honor, to clarify, I would  
12 not say there is no issue about a  
13 lock-out, we think it is clear from the  
14 testimony so far that it is quite likely  
15 that the NA members would have faced a  
16 lock-out had there not been a TRO and had  
17 they failed to pay. We are now talking  
18 about additional sanctions or penalties or  
19 punishments that could be applied to them  
20 beyond lock-out and there's one of renting  
21 their units is one of those others.

22 So this testimony is -- this  
23 particular testimony is not about lock-out  
24 it's separate from and in addition to  
25 that.

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1 THE COURT: Okay. All right.  
2 You can continue.

3 **BY ATTORNEY TANKENSON HODGE:**

4 Q. So, Mr. Cutrona, in your  
5 review of the condominium declaration  
6 documents that were referenced in the  
7 Great Bay memo which is Exhibit B and  
8 their footnote, did you find any other  
9 penalties, sanctions, or consequences that  
10 would apply to NA members if they didn't  
11 pay this invoice that was transmitted with  
12 Exhibit B?

13 A. I did. And as noted in point  
14 ten of my affidavit after the rental point  
15 that I just made, I go on to say that, the  
16 Seventh Amendment and restated reservation  
17 procedure addresses in Article 3 Section  
18 A4, the club system exchange, which also  
19 puts limitations on a member who is locked  
20 out and their ability to use the exchange  
21 or reservation within the exchange.

22 ATTORNEY WENTZEL: Again,  
23 Your Honor, I object on the best evidence  
24 rule. The witness is reading something  
25 from his affidavit, but then he makes a



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1 statement about what the cited article  
2 says, and that document itself is not  
3 before us.

4 ATTORNEY TANKENSON HODGE:

5 So, Your Honor, if I may? The plaintiff  
6 in this memo to the NA members is  
7 demanding that they make this payment of  
8 thousands of dollars by a date certain and  
9 they are given as their authority for  
10 consequences that will apply if they don't  
11 pay this reference to the declaration and  
12 amendments with a website. I do not think  
13 it is correct to say that the best  
14 evidence rule prohibits us from talking  
15 about what's in those documents. It may  
16 be that Great Bay wants to produce those  
17 documents if they think that Mr. Cutrona's  
18 summary is not correct. But he certainly  
19 was entitled to look at those condominium  
20 documents that Great Bay directed him to  
21 as a recipient of this memo to see exactly  
22 what they were threatening could occur if  
23 he didn't pay.

24 ATTORNEY WENTZEL: In that  
25 case, Your Honor, then --

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1 THE COURT: I understand, but  
2 I would like to see the precise language  
3 myself rather than hearing a summary or  
4 Mr. Cutrona's interpretation of the  
5 language.

6 ATTORNEY TANKENSON HODGE: So  
7 we're certainly willing to supplement the  
8 record, Your Honor, with a copy of each  
9 one of the documents referred to by Mr.  
10 Cutrona in this affidavit; we would be  
11 glad to do that. We can retrieve them. I  
12 don't have them available to put up now.  
13 They are not my --

14 THE COURT: Okay.

15 ATTORNEY TANKENSON HODGE: I  
16 could do that with the Court's permission  
17 if desired.

18 ATTORNEY WENTZEL: Your  
19 Honor, I would suggest that we take a  
20 break so that those documents can be  
21 obtained and transmitted to the Court and  
22 then -- counsel, and then we can all read  
23 along.

24 THE COURT: Okay, so far --  
25 well, Attorney Hodge, the precise articles

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1 and sections I would need to see those.  
2 Right now I have Article Six Section 4 and  
3 Article 3 Section A4 or something to that  
4 effect, but I'm not even clear.

5 ATTORNEY TANKENSON HODGE:

6 Well, Your Honor, I think the witness --  
7 the parts that I was asking the witness  
8 about included the Sixth Amendment to the  
9 Supplementary Declaration and the Seventh  
10 Amendment and Restated Reservation  
11 Procedure in Article 3 A4. So those were  
12 the two that are mentioned in the  
13 affidavit. It may be that Mr. Cutrona in  
14 his testimony today has some additional  
15 sites, and I would be glad to take a brief  
16 adjournment and --

17 Mr. Cutrona, do you have those  
18 documents?

19 THE WITNESS: I have them all  
20 in front of me, and all I'd have to do  
21 during your break is scan them, send them  
22 to you, Maria, and then you can get them  
23 to the Court.

24 THE COURT: And any other  
25 documents or any other portions that you

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1 intend to testify to to save on time.

2 THE WITNESS: I'm not  
3 anticipating counsel's questions, these to  
4 me are the most -- are the most  
5 appropriate exhibits other than the ones  
6 we already included, Your Honor.

7 THE COURT: Okay. So these  
8 are basically sanctions and consequences  
9 of not paying these invoices?

10 ATTORNEY TANKENSON HODGE:  
11 Correct.

12 THE COURT: Okay. Fifteen  
13 minutes?

14 ATTORNEY TANKENSON HODGE:  
15 Very well, Your Honor.

16 THE COURT: Okay. All right.  
17 Thank you.

18 ATTORNEY WENTZEL: Thank you,  
19 Your Honor.

20 **(Break was had.)**

21 THE COURT: Are you ready  
22 now, Attorney Hodge? Are we ready?

23 ATTORNEY TANKENSON HODGE:  
24 Yes, Your Honor. I'm not sure if Mr.  
25 Cutrona's back, but I have the documents

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1 that he found and scanned to me. So if  
2 he's with us then we're ready.

3 THE COURT: Okay.

4 THE WITNESS: I'm here.

5 ATTORNEY TANKENSON HODGE: So  
6 what we have, Your Honor, to add to the  
7 record are the Sixth Amendment to the  
8 Supplementary Declaration that's mentioned  
9 in Mr. Cutrona's affidavit, and the  
10 Seventh Amendment and Restated Reservation  
11 Procedure, which I have just taken it upon  
12 myself to call Defendant's Exhibits R and  
13 S. If needed we will also have the  
14 Supplementary Declaration since some of  
15 these are referred to as amendments. So  
16 if Your Honor would like I can put them up  
17 on the screen one at a time and let Mr.  
18 Cutrona speak to them.

19 THE COURT: Yes. Yes, we can  
20 proceed.

21 ATTORNEY WENTZEL: Your  
22 Honor, could I have copies of the new  
23 exhibits e-mailed to me?

24 ATTORNEY TANKENSON HODGE: I  
25 will try to find somebody in my office to

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1 do that. I'm a little bit less staffed-up  
2 than you folks, but I'll try to find  
3 somebody if you could just give me a  
4 moment.

5 THE COURT: Sure.

6 ATTORNEY WILCZYNSKI: Same  
7 here, Your Honor.

8 THE COURT: I'm sorry?  
9 Please, e-mail them to Miss  
10 Duggins also.

11 ATTORNEY TANKENSON HODGE:  
12 Sorry, judge, I didn't hear you. My  
13 assistant is gonna try to do that  
14 e-mailing for me.

15 THE COURT: Okay, I'm sorry.  
16 But I asked if you can e-mail them to Miss  
17 Duggins also.

18 ATTORNEY TANKENSON HODGE:  
19 Oh, okay. So could we just have Miss  
20 Duggins e-mail address.

21 THE COURT: One second.  
22 Deborah dot Duggins at vicourts dot org.

23 ATTORNEY TANKENSON HODGE:  
24 Should I go ahead and show them, judge, or  
25 wait --

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1 THE COURT: Yes, we can  
2 continue.

3 Attorney Wentzel, is that okay,  
4 can you we start?

5 ATTORNEY WENTZEL: Yes, Your  
6 Honor.

7 THE COURT: Okay. Very well.  
8 In the essence of time. Thank you.

9 Mr. Cutrona?

10 THE WITNESS: Yes, Your  
11 Honor.

12 THE COURT: Okay.

13 **(Defendant's Exhibit R shared.)**

14 **BY ATTORNEY TANKENSON HODGE:**

15 Q. So, Mr. Cutrona, can you see  
16 the document on the screen?

17 A. I can. Thank you.

18 Q. Okay. Do you recognize it?

19 A. Yeah, this is the Sixth  
20 Amendment to the Supplementary Declaration  
21 that we were discussing earlier. And the  
22 relevant section of it is on the next page  
23 after all of the whereases, where it goes  
24 to, "Now Therefore, pursuant to Article  
25 XV".

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1 Q. Okay.

2 A. Right there. The highlighted  
3 sections. When I did my review should  
4 support what I was saying, Your Honor.  
5 And just to summarize, The Board of  
6 Directors of GBCOA shall have the right to  
7 rent the allocated residence interests of  
8 Members who are more than sixty (60) days  
9 delinquent in paying their GBCOA  
10 assessment, i.e., Delinquent Members,  
11 under the following conditions.

12 The *proceeds of such rental*  
13 *shall be applied to the delinquent*  
14 *Member's past due GBCOA account, item "A".*  
15 And by item "B", it "shall not minimize in  
16 any way the responsibility of the  
17 Delinquent Member for past due  
18 assessments". And then when you get to  
19 item "C" on the next page, *if the*  
20 *Delinquent Member becomes current and in*  
21 *good standing, payment of all unpaid*  
22 *assessments, fees and interests, after any*  
23 *period of time and their allocated*  
24 *residence interest was rented by GBCOA or*  
25 *has gone un-rented by GBCOA, the Member*



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1        *will have no rights to use their allocated*  
2        *residence interest at that time.*

3                Your Honor, those are the  
4        quotations I was giving at the time the  
5        question was raised.

6                THE COURT: Okay.

7                ATTORNEY TANKENSON HODGE:  
8        Your Honor, I've marked this preliminary  
9        as Defendant's Exhibit R. For the Court's  
10       purposes I would ask it be so marked and I  
11       would move the admission of Exhibit R.

12               THE COURT: Okay. Very well.  
13               Is there any objection, Attorney  
14       Wentzel?

15               ATTORNEY WENTZEL: I do  
16       object, Your Honor. There's no showing  
17       that this document has any bearing or  
18       relevance on the issue of the CU-1  
19       assessments that were sent out in October  
20       2021. He's just reading and giving his  
21       own interpretation and understanding about  
22       general language in the declarations  
23       without making any showing that they apply  
24       or have anything to do with the CU-1  
25       assessments. It's the exact same problem

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1 we had when he got stuck on Defendant's  
2 Exhibit Number C.

3 THE COURT: No, I don't think  
4 it's the exact problem. This seems to be  
5 a little bit different and little bit more  
6 specific in the sense that it comes from  
7 Great Bay Condominium Association; it  
8 comes directly from your client. That's  
9 how it appears to the Court. So your  
10 objection is overruled. It's admitted.

11 **(Defendant's Exhibit R admitted.)**

12 ATTORNEY TANKENSON HODGE:  
13 Thank you, judge. We'd ask the Court now  
14 to permit us to show the witness the  
15 Seventh Amendment which we have proposed  
16 to mark Defendant's Exhibit S.

17 THE COURT: Yes.

18 ATTORNEY WILCZYNSKI: Your  
19 Honor, if I may?

20 THE COURT: Yes.

21 ATTORNEY WILCZYNSKI: I  
22 notice that there are items on that  
23 exhibit that are not part of the Sixth  
24 Amendment to the supplemental -- I believe  
25 there is some correspondence and such on

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1 there. Perhaps an explanation as to why  
2 that's part of this exhibit.

3 THE COURT: Okay, so we need  
4 to go back to Exhibit R, the Sixth  
5 Amendment?

6 ATTORNEY WILCZYNSKI: Your  
7 Honor, there's correspondence that I saw  
8 on there.

9 THE COURT: Okay, Attorney  
10 Hodge, let's go back to that, please.

11 ATTORNEY TANKENSON HODGE:  
12 Yes, judge. I do see what Mr. Wilczynski  
13 is talking about. It looks like it's a  
14 transmittal that is, like, the second page  
15 of the document.

16 THE WITNESS: That's exactly  
17 what it is. If I -- Maria, if I can say,  
18 it was issued on February 2012 by the then  
19 and now deceased secretary of the Great  
20 Bay Members Association Mr. Tim O'Brien,  
21 Esquire, where he is communicating and  
22 sending the Sixth Amendment to the  
23 Supplementary Documentation to the Great  
24 -- GBCOA -- to the membership of GBCOA. I  
25 apologize, it was the back page of the

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1 first page and it went through. But it is  
2 the transmittal as was noted.

3 ATTORNEY TANKENSON: So I  
4 submit that it should be allowed to go in  
5 with this exhibit, judge, perhaps the  
6 pages could be rearranged, but I don't  
7 think that changes the significance.

8 THE COURT: Yeah, it seems to  
9 be consistent with the actual amendment.

10 ATTORNEY TANKENSON HODGE:  
11 Right, it refers to the Sixth Amendment.

12 THE COURT: Right. Okay.  
13 It's overruled. It's admitted.

14 ATTORNEY WENTZEL: I didn't  
15 object to this letter, Your Honor.

16 THE COURT: Okay, Attorney  
17 Wentzel?

18 ATTORNEY WENTZEL: I didn't  
19 object to this letter. I have no  
20 objection to it.

21 THE COURT: Oh, okay. It's  
22 in.

23 **(Defendant's Exhibit S shared.)**

24 ATTORNEY TANKENSON HODGE:  
25 So, Your Honor, I'm going to have to say,

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1 respectfully, it is a little bit confusing  
2 to me to have two different voices for the  
3 opposing party taking two different  
4 positions, so --

5 THE COURT: Yes.

6 ATTORNEY TANKENSON HODGE: We  
7 should have one or the other attorney be  
8 the spokesman for Great Bay in this.

9 ATTORNEY WENTZEL: Well, I  
10 don't have the benefit of having the  
11 exhibit, and so I couldn't see that  
12 there's correspondence attached to it. If  
13 that's how we're gonna proceed, then I  
14 request that I get the documents by  
15 e-mail, we take a break, I can look at  
16 them, and then I can do all the talking.

17 THE COURT: Well --

18 ATTORNEY WENTZEL: I mean,  
19 Mr. Wilczynski just pointed out that there  
20 was more to the exhibit than what had been  
21 reviewed. I wasn't aware of that; I don't  
22 have the document.

23 THE COURT: Yes, I understand  
24 and it's on the screen -- it's on the  
25 screen, and I already ruled that it's

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1 admitted because it speaks directly to the  
2 Sixth Amendment itself. But I also  
3 understand what Attorney Hodge is  
4 requesting. Are you all going to decide,  
5 Attorney Wentzel or Attorney Wilczynski?

6 ATTORNEY WILCZYNSKI: Your  
7 Honor, Attorney Wentzel is lead on this  
8 issue and I defer to him, and I will mute  
9 my phone and I'll watch.

10 THE COURT: All right. No  
11 problem. No problem. Thank you. So  
12 let's move on to the Seventh Amendment and  
13 Restated Reservation Procedures.

14 ATTORNEY TANKENSON HODGE:  
15 Correct. This is the document that's  
16 titled the Seventh Amended and Restated  
17 Reservation Procedures. We would propose  
18 to mark this Defendant's Exhibit S, and I  
19 would ask the witness to identify it.

20 THE WITNESS: Your Honor,  
21 again, in my efforts to try to understand  
22 the direction on the billing, which we  
23 referred to as the declarations, I  
24 reviewed as many of those documents as I  
25 could gain access to. This is the

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1 Membership Program Reservation Procedure,  
2 and in this program it defines a lot of  
3 the terms, some of which we already  
4 defined in these hearings. But the  
5 appropriate sections of this that I'll  
6 call to Your Honor's attention and the  
7 courts is Section 6, which is called  
8 Suspension of Membership Privileges; the  
9 Cancellation of Existing Reservations; and  
10 the Use of Canceled Allocation. When  
11 GBCOA --

12 THE COURT: Okay, so one at a  
13 time, Mr. Cutrona.

14 **BY ATTORNEY TANKENSON HODGE:**

15 Q. What page is that, Mr.  
16 Cutrona?

17 A. I'm sorry. Page 21, it's  
18 section six.

19 ATTORNEY WENTZEL: Your  
20 Honor, it's really difficult for me to,  
21 you know, just watch this is being  
22 scrolled. I need to have the  
23 document e-mailed to me so I can --

24 THE COURT: I understand.  
25 Did your assistant e-mailed the documents

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1 already, Attorney Hodge?

2 ATTORNEY TANKENSON HODGE:

3 Let me double check, judge. Yes, she said  
4 the e-mails went.

5 THE COURT: Okay, I'll give  
6 Attorney Wentzel five minutes to collect  
7 and to review.

8 ATTORNEY WENTZEL: Okay, can  
9 we minimize this full screen share so I  
10 can get to my e-mail. Thank you.

11 THE COURT: Sure.

12 Did you receive a copy, Attorney  
13 Wilczynski?

14 ATTORNEY WILCZYNSKI: I did,  
15 Your Honor. I just got a copy; I looked  
16 at it. And this isn't a Great Bay  
17 document. I mean, that's the problem with  
18 doing things like this on a split shot  
19 basis, doing things, you know, in the  
20 middle of a hearing. This is not even  
21 document that's -- it's a general document  
22 by Cobalt who is a manager of a multitude  
23 of condominium associations, Ritz-Carlton  
24 people. And it's just -- the problem I  
25 have, Your Honor, is it just -- it kind of



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1 floats by as this is something that Great  
2 Bay said, and it's really not. The person  
3 that was there on behalf of the Management  
4 Company has already testified that these  
5 -- the issues -- this claim are not  
6 generally speaking issues related to the  
7 regular assessments, and that is what this  
8 is about and it's not even by my client.  
9 At least -- at least in the ten  
10 seconds I've had to look at it.

11 ATTORNEY WENTZEL: Your  
12 Honor, may I be excused to go pull these  
13 documents off the printer and then have a  
14 couple of minutes to look at them?

15 THE COURT: Yes, you may.  
16 Five minutes. Five minutes, please.

17 ATTORNEY TANKENSON HODGE:  
18 Thank you, judge.

19 **(Brief break was had.)**

20 THE COURT: Okay, so can we  
21 start?

22 ATTORNEY WENTZEL: Yes, Your  
23 Honor.

24 THE COURT: Okay, very well.  
25 Attorney Hodge.

1                   ATTORNEY TANKENSON HODGE:  
2           Should I put my exhibit back up, Your  
3           Honor, or may I put it back up?

4                   THE COURT: You can put it up  
5           now.

6                   ATTORNEY WENTZEL: Your  
7           Honor, before the witness is asked  
8           questions about Defendant's Exhibit S, I  
9           have several objections to this document  
10          now that I've been able to see it. This  
11          document is hearsay, and it's being used  
12          to prove the truth of the matters that are  
13          asserted in the document that Mr.  
14          Cutrona's going to read. It's not a GBCOA  
15          document, so it doesn't fall under the  
16          exception of the statement of a party.  
17          And it's not an official public record  
18          either.

19                   Unlike the declarations that  
20          we've been discussing, this document  
21          doesn't bear any stamp from the Recorder's  
22          Office of the Virgin Islands, and it  
23          doesn't show that it's a public record.  
24          And so that exception to the hearsay rule  
25          does not apply. And it's clear that Mr.

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1 Cutrona is going to be reading statements  
2 that he selects from this hearsay  
3 document, and that they are going to be  
4 offered for the truth of what the  
5 statement say, and that's improper. So I  
6 object on all those grounds.

7 ATTORNEY TANKENSON HODGE:  
8 So, if I may, Your Honor?

9 THE COURT: Yes.

10 ATTORNEY TANKENSON HODGE: I  
11 would just recall to counsel and the Court  
12 that the commencement of this phase of the  
13 testimony was the introduction of the  
14 memorandum from Great Bay itself to The  
15 Neighborhood Association members  
16 explaining the invoices, telling them in  
17 four pages that they had to pay these  
18 assessments, telling them that they were  
19 going to enforce consequences if they fail  
20 to pay by the due date under the  
21 declarations, and providing a footnote  
22 that gave them a link to documents that  
23 explain what those governing documents  
24 were. And Mr. Cutrona is prepared to  
25 testify that this is one of the documents

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1 connected through the link.

2 Furthermore, it is a document of  
3 Ritz-Carlton Club which is the Management  
4 Company, as Your Honor knows, that Miss  
5 Leighton-Hermann testified for. The  
6 Management Company is obviously an agent  
7 for Great Bay. They have the right to  
8 explain the circumstances under which the  
9 reservations and use of the units are  
10 offered for their association. And the  
11 connection between the Great Bay memo  
12 Exhibit B and this, is that it is a  
13 document found by a link that Great Bay  
14 sent to the owners telling them about how  
15 their consequences would be determined.  
16 Contrary to what Attorney Wilczynski said,  
17 on the tag-team approach, this is not a  
18 document from some other unknown party,  
19 this is a document from the Ritz-Carlton  
20 club, you can see that, Your Honor, at the  
21 very beginning, including from the  
22 Ritz-Carlton Club St. Thomas. And if you  
23 look at the bottom of the document, Your  
24 Honor, you can see it is a document that  
25 is signed by the Ritz-Carlton Development

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1 Company. So this is the entity that Great  
2 Bay has designated and pointed as its  
3 management company that was elicited at  
4 great length in Mr. Wentzel's examination  
5 of Miss Leighton-Hermann. And it is quite  
6 astounding that Great Bay would attempt to  
7 conceal from the Court the very  
8 consequences that they were telling  
9 Neighborhood Association members would  
10 apply if they didn't pay on time by  
11 including this link to these documents,  
12 and then say the documents are hearsay.  
13 They were part of the communication from  
14 Great Bay.

15 ATTORNEY WENTZEL: Your  
16 Honor, this document is not referenced in  
17 the memo from the Great Bay that they read  
18 into the record. What they are saying  
19 is --

20 THE COURT: Isn't it  
21 referenced in the footnote, footnote --

22 ATTORNEY WENTZEL: No, it's  
23 not, Your Honor. All that's referenced in  
24 the footnote -- if we go back to that  
25 exhibit, that Great Bay communication

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1 quotes a portion of one of the  
2 declarations to explain why these CU-1  
3 assessments are being sent. Then in the  
4 footnote it says that the Declaration can  
5 be found on the website, okay? Now what  
6 they are doing, what NA's doing here, and  
7 Attorney Hodge, they took the position  
8 that there is a link to the website in the  
9 footnote, so everything that's on the  
10 website is a GBCOA document and germane to  
11 the issues. That's totally improper.

12 This document is not referred to  
13 by GBCOA. There is nothing in the record  
14 where this document is quoted. If you  
15 look at that GBCOA communication, it's  
16 five or six pages long and it quotes  
17 verbatim from numerous provisions of the  
18 declarations. This document, Defendant's  
19 Exhibit 7, is not in there. There's no  
20 reference to it, it's not quoted. There's  
21 been no showing that this document is a  
22 Great Bay document. It says on page one  
23 it was prepared by The Cobalt Travel  
24 Company. It's hearsay --

25 THE COURT: So, Attorney

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1 Hodge, my concern also is that this  
2 document does not mention Great Bay  
3 anywhere in the document, the Great Bay  
4 Association -- the Great Bay Association.  
5 It refers to the Ritz-Carlton Club St.  
6 Thomas. And the testimony from Miss  
7 Leighton-Hermann was very clear that she  
8 works for the Ritz-Carlton, she is the  
9 director of finance or the finance  
10 director for these managing companies, and  
11 they had absolutely nothing to do --  
12 absolutely nothing to do with the issuance  
13 of the assessments -- the invoices issued  
14 by Great Bay Association.

15 And even when the Members  
16 inquired of her, basically, she had  
17 nothing to offer them other than the fact  
18 that it surely did not come from the  
19 Ritz-Carlton Club. And all of this that I  
20 see in front of me refers to the  
21 Ritz-Carlton Club.

22 ATTORNEY TANKENSON HODGE:  
23 Yes, Your Honor. But if I may? I  
24 acknowledge that Miss Leighton-Hermann  
25 that said in print, it's not in dispute,

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1 that she is an officer of the Ritz-Carlton  
2 Club. She also testified that they are  
3 the management company for Great Bay. And  
4 we know from Exhibit B that when Great Bay  
5 sent this invoice, which the Management  
6 Company wouldn't send, the Management  
7 Company refused to be involve in this  
8 assessment, that they sent four pages  
9 telling the Neighborhood Association  
10 members that they had to pay this amount  
11 even though they were not the owner of the  
12 unit, and said in the last sentence of  
13 Exhibit B, Your Honor, *if the invoice is*  
14 *not paid in full within 30 days the*  
15 *Member's Association will take further*  
16 *action as provided for in the declaration.*  
17 And they gave them footnote to these  
18 members that would refer them to a place  
19 where they could read the documents that  
20 would describe the kinds of further action  
21 that they could be exposed to. So we --

22 ATTORNEY WENTZEL: This  
23 document is not part of the Declaration.

24 ATTORNEY TANKENSON HODGE:  
25 I'm sorry, Mr. Wentzel.



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1 THE COURT: One person at a  
2 time. Okay? I'll listen to you in a  
3 minute, Attorney Wentzel.

4 Go ahead, Attorney Hodge.

5 ATTORNEY TANKENSON HODGE:

6 But what I'm suggesting to the Court is  
7 that when Great Bay sends this memo and  
8 tells the owners that they are going to  
9 take action if these amounts are not paid  
10 in full, and they include a footnote that  
11 links them to documents that includes  
12 those issues by Ritz-Carlton Club, which  
13 is the management company for Great Bay,  
14 clearly those should be admissible. What  
15 weight Your Honor chooses to give them, I  
16 acknowledge that would be a matter for  
17 argument. But to suggest that they are  
18 not even admissible even though they are  
19 specifically linked to this memo demanding  
20 payment I think is not correct. It's not  
21 a hearsay issue because it was part of the  
22 communication from Great Bay to The  
23 Neighborhood Association members to  
24 essentially convince them that they had to  
25 pay, and that these were the consequences

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1 that would follow if they didn't.

2 THE COURT: Okay. All right.  
3 Attorney Wentzel.

4 ATTORNEY WENTZEL: Your  
5 Honor, the memo that has been referred to  
6 just so the record is clear, is the  
7 Defendant's Exhibit B, Exhibit B to Mr.  
8 Cutrona's affidavit. And Attorney Hodge  
9 is trying to link Defendant's Exhibit S  
10 based on the sentence on the last page of  
11 Defendant's Exhibit B that says, quote,  
12 "if the invoice is not paid in full within  
13 30 days the Member's Association," that's  
14 GBCOA, "will take further action as  
15 provided for in the declarations."  
16 Defendant's Exhibit S that we're looking  
17 at right now as Your Honor has observed,  
18 is not part of the declarations. It's not  
19 a GBCOA document. There's absolutely no  
20 foundation for counsel's contention that  
21 when it says they'll take further action  
22 as provided for in the Declaration, that  
23 that has any reference to this document  
24 Defendant's Exhibit S. It's pure  
25 speculation and it's not a GBCOA document,

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1 it's not part of the declarations, and  
2 they are bootstrapping. They can't say  
3 that lock-out procedures were ever  
4 threatened for these CU-1, so they are  
5 doing this end around and having Mr.  
6 Cutrona speculating, give his opinion  
7 about documents that aren't even  
8 declarations.

9 THE COURT: Okay. I'm going  
10 to allow it. I'm going to allow the  
11 testimony to come in, and I'll see where  
12 it takes the Court. I understand both  
13 sides of this argument, but let's proceed,  
14 Attorney Hodge, I will allow Mr. Cutrona  
15 to testify on this exhibit.

16 ATTORNEY TANKENSON HODGE:  
17 Very well. Thank you. Thank you, Your  
18 Honor.

19 **BY ATTORNEY TANKENSON HODGE:**

20 Q. So, Mr. Cutrona, looking at  
21 what is now marked Defendant's Exhibit S,  
22 would you follow along and show us the  
23 significant portions that were referred to  
24 in your earlier testimony.

25 A. Yes, I will. And if I can

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1 just preface, Your Honor, when the  
2 references to this being not a part of the  
3 declarations, there are several places in  
4 the declarations --

5 ATTORNEY WENTZEL: Your  
6 Honor, I object to the witness just giving  
7 a speech to the Court.

8 THE COURT: Yes. Okay.  
9 Sustain. What page number are we on?

10 ATTORNEY TANKENSON HODGE:  
11 I'm actually on page six, Your Honor, if  
12 the witness can have a look at page six.

13 THE COURT: Okay.

14 **BY ATTORNEY TANKENSON HODGE:**

15 Q. It's highlighted there, Member  
16 in Good Standing.

17 A. Right. These are just the  
18 definitions, Your Honor, for the  
19 reservations --

20 THE COURT: Okay, wait for  
21 the question, please.

22 THE WITNESS: I'm sorry.

23 Q. So did you see that paragraph  
24 highlighted, Member in Good Standing, Mr.  
25 Cutrona?

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1           **A.** I do.

2           **Q.** Okay. And as part of the  
3 definition of a member in good standing,  
4 can you tell us what the last sentence  
5 says?

6           **A.** The last sentence says,  
7 program -- in that paragraph it says, the  
8 "Program Manager is entitled to rely on  
9 any information it receives from the Club  
10 Manager, Member's Association and/or  
11 Developer relative to whether a Member is  
12 current with all payments, and Program  
13 Manager shall have no duty to verify the  
14 accuracy of any such information."

15           **Q.** Okay. And continuing on --  
16                   THE COURT: Well, who would  
17 be considered the program manager here?

18 **BY ATTORNEY TANKENSON HODGE:**

19           **Q.** So, Mr. Cutrona, can you  
20 identify the program manager for --

21           **A.** Yes, it's in the definitions  
22 on page seven if you go to the next page.  
23 Your Honor, the program manager reading  
24 from the document, *means the person who*  
25 *manages and operates the Membership*

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1       *Program, which is The Cobalt Travel*  
2       *Company, a Delaware limited liability*  
3       *company, its successors and assigns.*

4                   THE COURT: Okay. And who is  
5       the club manager?

6                   THE WITNESS: Club manager is  
7       not defined, Your Honor, but having been a  
8       member for 20 years the club manager is  
9       the Ritz-Carlton Hotel Company who is part  
10      of the Management Company, who are the  
11      onsite residence of people that services  
12      in St. Thomas.

13                  ATTORNEY WENTZEL: Your  
14      Honor, I move to strike that answer.  
15      There is no foundation for Mr. Cutrona to  
16      say who the club manager is. The document  
17      doesn't identify the club manager. He is  
18      just giving his speculative opinion about  
19      what it is.

20                  Miss Leighton-Hermann testified  
21      that the Ritz-Carlton Club is the  
22      Management Company. We don't -- there's  
23      no foundation that's the same as the club  
24      manager referred to here. There are many,  
25      many Marriott entities. We're talking

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1 about Cobalt, we're talking about an  
2 unspecified club manager. It's all part  
3 of the problem with this document, there  
4 is no foundation, I can't cross-examine  
5 this hearsay document, and Mr. Cutrona's  
6 just giving his personal opinions about  
7 what it means.

8 THE WITNESS: Your Honor, I  
9 would like to call your attention, I  
10 overlooked, the club manager is defined on  
11 page four, if we could move the screen to  
12 it. Where it reads, the "Club Manager  
13 means the person engaged by the Developer,  
14 or as applicable, the Member's  
15 Association, with responsibility for the  
16 management and operation of a particular  
17 Club."

18 THE COURT: Okay. Very well.

19 **BY ATTORNEY TANKENSON HODGE:**

20 Q. Mr. Cutrona, based on your  
21 earlier testimony at the previous hearing,  
22 could you remind us of your experience not  
23 just as the owner of a unit, but with  
24 Great Bay Association and Neighborhood  
25 Association, are you familiar with the

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1 manager of the Associations and the  
2 Ritz-Carlton Club St. Thomas?

3 **A.** Yes.

4 **Q.** And who do you know that  
5 manager to be?

6 **A.** The manager of Ritz-Carlton  
7 St. Thomas is the Ritz-Carlton Hotel  
8 Company who has an agreement with Marriott  
9 Vacation Worldwide Corp to serve as part  
10 of the Management Company responsible for  
11 onsite operations. And I know that not as  
12 just a member, but I also was president of  
13 this Great Bay Association for over six  
14 years with ten years on that board, and I  
15 was also president of the Aspen Club to  
16 which these reservation procedures apply.

17 THE COURT: All right. Thank  
18 you.

19 THE WITNESS: Thank you, Your  
20 Honor.

21 **BY ATTORNEY TANKENSON HODGE:**

22 **Q.** Directing your attention, Mr.  
23 Cutrona, to paragraph -- page seven,  
24 Reserved Allocation. Do you see that?

25 **A.** Yes, I do.



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1           **Q.** What is a Reserved Allocation  
2 and what significance does it have in  
3 connection with this proceeding?

4           **A.** Reserved Allocation is the  
5 amount of time a member owns each year,  
6 which rotates in weeks each year, usually  
7 21 days is what the ownership is. And  
8 that ownership is called reserved  
9 allocation. A "portion of the Allocation  
10 as established in the Club", in which case  
11 the St. Thomas Club, "Documents, for which  
12 a Member is assigned usage of the Member's  
13 Deeded Club Unit, his residence, or suite  
14 interest, during a specific period".  
15 Those reservations, Your Honor, are  
16 released and guaranteed 16 months in  
17 advance, in which case then people could  
18 make their personal plans and commitments  
19 relative to the dates that they are  
20 assigned to be in their residence.

21           **Q.** You have a specific reserved  
22 allocation yourself for a unit at the St.  
23 Thomas Ritz-Carlton Club for any time in,  
24 let's say, in the next six months?

25           **A.** I do.

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1           **Q.** For your suite at the  
2 Ritz-Carlton?

3           **A.** I do.

4           **Q.** Does it have, like, a  
5 particular date connected to it?

6           **A.** Do I know those dates?

7           **Q.** No -- yes, does it have a  
8 particular date connected yet or not yet?

9           **A.** Yes. Well, they did 16 months  
10 ago. So I knew 16 months ago what dates I  
11 would have this year, and that's why  
12 members getting that reserved allocation  
13 commitment in writing from these  
14 reservation procedures then can book their  
15 flights or book their family or rent it to  
16 third parties, whatever they decide to do.

17           **Q.** So when is your personal  
18 allocation period coming up?

19           **A.** In my suite, just give me a  
20 second to go to it. In my suite I will be  
21 on property the weeks of February 4th,  
22 2022 -- the reserved allocation dates are  
23 February 4th, 2022 to February 11th, and  
24 February 11th, 2022 to February 18th,  
25 2022, that's two weeks. And then the -- a

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1 third week is July 8th to July 15th of  
2 2022. Usually two winter weeks, one  
3 summer week, for a total of 21 days.

4 Q. And in order to use your  
5 allocations you have to make travel plans  
6 within a reasonable amount of time before  
7 your actual scheduled occupancy?

8 A. Yes, you do.

9 Q. What significance or impact  
10 would it have on you if you lost your  
11 ability to use your allocation based on  
12 not paying this assessment from Great Bay?

13 A. Well, in the case of the issue  
14 of lock-out, I would show up and not be  
15 allowed to access because of not paying  
16 the special assessment rendered by GBCOA  
17 for CU-1. And as a result then, I would  
18 not have a place to stay, which would  
19 either subject me to higher rates at the  
20 last minute, or return flight change to go  
21 back and not be able to be on the island  
22 of St. Thomas.

23 In some cases you have family  
24 members that's not just one flight, it  
25 could be, you know, six to eight people

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1 whose flights and reservations and housing  
2 are put in jeopardy and not provided for.

3 Q. Does these --

4 ATTORNEY WENTZEL: Your  
5 Honor, I object to the testimony. Again,  
6 he's talking about what would happen if he  
7 was locked out. He's not testified that  
8 anybody's ever advised him that he's gonna  
9 get locked out, that GBCOA has ever  
10 threatened to lock him out. It's just  
11 speculation by Mr. Cutrona. And they are  
12 using his speculation to try to supply a  
13 critical element of their case, which is  
14 that there is a threat that the -- any  
15 members are gonna get locked out if they  
16 don't pay the CU-1 assessments.

17 ATTORNEY TANKENSON HODGE:  
18 So, Your Honor, if I may say so now? I'm  
19 increasingly concern that is like playing  
20 a game here. Great Bay has sent a memo  
21 and an invoice to all of the NA members  
22 and said, you must pay these thousands of  
23 dollars of assessments for the CU-1 by  
24 November 22nd, and in case you don't  
25 you'll be delinquent, and if you are

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1 delinquent we will take the actions  
2 permitted by the declaration.

3 ATTORNEY WENTZEL: It doesn't  
4 say that, Your Honor.

5 ATTORNEY TANKENSON HODGE:  
6 I'm sorry, excuse me if --

7 THE COURT: Okay, one person  
8 at a time. Attorney Hodge.

9 ATTORNEY TANKENSON HODGE:  
10 They received that literally within days  
11 of receiving a letter from the  
12 Ritz-Carlton Club reminding them that, in  
13 case of delinquency, members were subject  
14 to being locked out. Mr. Cutrona is  
15 testifying about the consequences to him  
16 of this communication from Great Bay  
17 coupled with what is a very clear  
18 indication that failure to pay is a threat  
19 to their right to use their units. And  
20 indeed, Your Honor, the one certainty is,  
21 that Great Bay is not going to be able to  
22 tell this Court under oath, to avoid what  
23 they call speculation, that they do not  
24 intend to impose any of these penalties if  
25 The Neighborhood Association members don't

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1 pay. Clearly, the threat that accompanies  
2 the bill is, if you don't pay you face  
3 these consequences. The fact that they  
4 have managed not to mention lock-out in  
5 their memo, but had it come within days of  
6 the Ritz-Carlton notice of that lock-out,  
7 is not assuring to Neighborhood  
8 Association members like Mr. Cutrona.  
9 It's clear that that is the threat that is  
10 lingering here, and that's not  
11 speculation, that's just reasonable  
12 reading of English.

13 ATTORNEY WENTZEL: Your  
14 Honor.

15 ATTORNEY TANKENSON HODGE:  
16 Mr. Wentzel is not gonna tell the Court  
17 that they are not going to do any of these  
18 things if the people don't pay.

19 THE COURT: Okay. Attorney  
20 Wentzel, your objection is overruled, I  
21 will allow him to testify, and he is  
22 testifying with respect to his personal  
23 issues, his set time, and the consequences  
24 if he's unable to access his unit. So, he  
25 can testify.

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1                   You can proceed, Attorney Hodge.

2                   ATTORNEY TANKENSON HODGE:

3                   Thank you, Your Honor.

4                   **BY ATTORNEY TANKENSON HODGE:**

5                   **Q.** So, Mr. Cutrona, in addition  
6                   to the exhibits you've identified already,  
7                   they were marked exhibits that were  
8                   condominium declaration amendments,  
9                   Exhibits E, F, and G that were relied on  
10                  in connection with this motion that have  
11                  to do with the issue of whether your  
12                  members, your individual Neighborhood  
13                  Association members are personally  
14                  responsible for the CU-1 assessments, and  
15                  you attached Exhibits E, F, and G.

16                  Your Honor, I would like to ask  
17                  the Court to allow us to show the witness  
18                  Exhibits E, F, and G, unless the plaintiff  
19                  would stipulate that those are two copies  
20                  of those portions of the condominium  
21                  declaration documents. I think they may  
22                  correspond to something the plaintiff  
23                  marked as well.

24                  THE COURT: Okay, E, F, and  
25                  G?

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1 ATTORNEY TANKENSON HODGE:  
2 Yes, judge.

3 THE COURT: Is there any  
4 stipulation here?

5 ATTORNEY WENTZEL: These are  
6 all declarations, publicly filed documents  
7 with the Recorder's Office. We don't  
8 object to these documents being admitted.

9 ATTORNEY TANKENSON HODGE:  
10 Very well. Thank you. So, Your Honor,  
11 then we move Exhibits E, F, and G.

12 THE COURT: They are  
13 admitted.

14 **(Defendant's Exhibits E, F, and G admitted**  
15 **via stipulation.)**

16 ATTORNEY TANKENSON HODGE:  
17 Thank you.

18 THE COURT: E, F, and G, yes.

19 **BY ATTORNEY TANKENSON HODGE:**

20 Q. I don't actually need Mr.  
21 Cutrona to go through documents. But I  
22 would like to ask you, Mr. Cutrona, did  
23 there come a time after you received the  
24 invoice from Great Bay for the CU-1  
25 assessments and the memorandum you've



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1 identified as Exhibit B that you and your  
2 board asked or authorized your attorney to  
3 communicate with Great Bay any objections  
4 to the assessment?

5 **A.** Yes, we did.

6 ATTORNEY TANKENSON HODGE:  
7 Your Honor, may we show the witness what's  
8 been marked Defendant's Exhibit H?

9 THE COURT: Yes.

10 **(Defendant's Exhibit H shared.)**

11 ATTORNEY TANKENSON HODGE: Is  
12 the exhibit visible to the parties and the  
13 Court?

14 THE COURT: Yes, I can see  
15 it.

16 ATTORNEY WENTZEL: The e-mail  
17 that you have exhibited right here is not  
18 part of the Exhibit H attached to your  
19 motion.

20 ATTORNEY TANKENSON HODGE:  
21 It's doesn't matter to me I'm willing to  
22 just omit that, it's just a transmittal.

23 **BY ATTORNEY TANKENSON HODGE:**

24 **Q.** Mr. Cutrona, do you see what's  
25 on the screen as part of Exhibit H, and if

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1 so, do you recognize it?

2 **A.** It's a letter written by NA  
3 counsel Hodge and Hodge to the president  
4 of the Great Bay Condominium Association  
5 on the 3rd of November 2021.

6 **Q.** And --

7 ATTORNEY WENTZEL: Your  
8 Honor, I object to the witness testifying  
9 about this document, the statements of  
10 counsel are not evidence. And when Mr.  
11 Cutrona --

12 THE COURT: Attorney Hodge,  
13 what's the purpose of this letter for this  
14 witness?

15 ATTORNEY TANKENSON HODGE:  
16 It's just really -- the witness is to  
17 authenticate the document, judge, and the  
18 purpose of the exhibit is to show that a  
19 demand was made on Great Bay to rescind  
20 the invoices before this action for  
21 temporary restraining order was filed.

22 ATTORNEY WENTZEL: See, they  
23 are using it to prove the truth of the  
24 statements, which consist of the  
25 statements of counsel, which by definition

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1 are not evidence. So it's --

2 THE COURT: His objection is  
3 sustained.

4 ATTORNEY TANKENSON HODGE:  
5 Very well, Your Honor. I would say I  
6 don't offer it for the truth of the  
7 matters asserted, but I would propose to  
8 have it accepted to establish that  
9 Neighborhood Association did make a  
10 demand, a timely demand on Great Bay to  
11 rescind the invoices before they filed  
12 their motion.

13 THE COURT: Understood.  
14 Attorney Wentzel?

15 ATTORNEY WENTZEL: If that's  
16 not offering it for the truth of what it  
17 states in the document, I don't know what  
18 is.

19 THE COURT: I understand they  
20 made a request, a demand prior to the  
21 request for the TRO. I understand that.  
22 So I don't have a problem with that being  
23 admitted, but I don't need testimony from  
24 Mr. Cutrona.

25 ATTORNEY TANKENSON HODGE:

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1 Very well, judge.

2 THE COURT: Okay.

3 ATTORNEY TANKENSON HODGE:

4 Yeah, I simply would have him just  
5 authenticate it that that's the  
6 communication that was sent. And solely  
7 for the purpose of establishing that  
8 demand was made, a timely demand was made  
9 on Great Bay to withdraw the assessment, I  
10 offer Exhibit H.

11 THE COURT: Okay. It's  
12 admitted.

13 **(Defendant's Exhibit H admitted.)**

14 **BY ATTORNEY TANKENSON HODGE:**

15 **Q.** And after you asked your  
16 counsel to communicate with Great Bay a  
17 demand to rescind the invoices, Mr.  
18 Cutrona, did Great Bay, in fact, agree to  
19 do so?

20 **A.** No, they did not.

21 **Q.** During the period of time  
22 that's covered by this assessment, 2017 to  
23 2021, do you have any personal knowledge  
24 about who has actually been using the CU-1  
25 commercial lounge?

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1                   ATTORNEY WENTZEL: Judge, I  
2 object to this line of questioning.

3                   THE COURT: On what legal  
4 basis?

5                   ATTORNEY WENTZEL:  
6 Irrelevance. What does that have to do  
7 with any of the issue that are in their  
8 motion for a TRO and preliminary  
9 injunction?

10                  THE COURT: Overrule.

11 **BY ATTORNEY TANKENSON HODGE:**

12                  **Q.** Mr. Cutrona?

13                  **A.** Yes.

14                  **Q.** Do you need me to repeat the  
15 question?

16                  **A.** Would you please, counsel.

17                  **Q.** Yes. During the four-year  
18 period covered by the assessment by Great  
19 Bay to Neighborhood Association members  
20 for common charges for the commercial unit  
21 CU-1, do you have any personal knowledge  
22 about who has actually been using the  
23 commercial unit?

24                  **A.** Yes, I do.

25                  **Q.** Would you describe that for

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1 the Court, please.

2           **A.** During periods of time when I  
3 was on site at the Ritz-Carlton Club St.  
4 Thomas, the GBCOA sponsored chefs come in  
5 and use the facility to offer a five  
6 course dinner, could be in different types  
7 of those things. I personally didn't want  
8 to go but was encouraged to go and I  
9 actually went; they were very nice. So  
10 they have engaged a third-party chef to  
11 periodically host events, to use the  
12 facility for their purposes.

13           ATTORNEY WENTZEL: Object.  
14 Object, Your Honor, there is no foundation  
15 for -- it's one thing for him to say he  
16 went for a dinner that was put on by a  
17 chef. It's quite another thing for him to  
18 say that the GBCOA engaged the chef to put  
19 dinners on from time to time.

20           THE COURT: Mr. Cutrona, are  
21 you saying that The Neighborhood  
22 Association did not engage these chefs to  
23 put on dinners or anything?

24           THE WITNESS: The  
25 Neighborhood Association did not engage

**Direct - Mr. Cutrona**

1 those chefs at all, Your Honor, they  
2 haven't done anything related to the CU-1  
3 unit since the deed was transferred. I  
4 did attend twice events that GBCOA  
5 sponsored that I was trying to define  
6 their use of the facility during that  
7 period of time that they are charging the  
8 members of the suite members the CU-1  
9 assessment for.

10 THE COURT: And what year,  
11 what timeframe are we speaking about here?

12 THE WITNESS: This would  
13 probably be 2019, 2018. Pre-pandemic,  
14 Your Honor.

15 THE COURT: All right. You  
16 can continue, Attorney Hodge.

17 **BY ATTORNEY TANKENSON HODGE:**

18 Q. So just for clarity, Mr.  
19 Cutrona, what you call "the facility" is  
20 the CU-1 unit that what used to be called  
21 the Grand Palazzo Club, the lounge that  
22 we're talking about?

23 A. That's correct.

24 Q. And during that same four-year  
25 period that is covered by this assessment,

**Direct - Mr. Cutrona**

1 was -- did NA -- did Neighborhood  
2 Association ever make a request of Great  
3 Bay to be allowed to use the lounge for  
4 meeting or for any other purpose?

5 **A.** Yes. Every year we're  
6 required under our declarations and bylaws  
7 to have an annual members meeting. We've  
8 requested to use common space within the  
9 condominium, the members reception -- the  
10 members reception area, the members  
11 lounge, and Grand Palazzo the CU-1, and  
12 they've refused to allow suite members to  
13 utilize any common facility since the  
14 transfer of the deed in 2017.

15 **Q.** So that's specifically the  
16 commercial lounge, the CU-1?

17 **A.** Yes. Yes. We have been  
18 forced to go to the hotel during its  
19 closure to actually use the general  
20 manager's office to conduct our annual  
21 member's meeting, because they will not  
22 allow us a right as suite owners, let  
23 alone Neighborhood Association members to  
24 use any common space at the facility.

25 **Q.** So, also since the deed was



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1 delivered in 2017 have you come to learn  
2 anything about any insurance proceeds paid  
3 or received by any party related to the  
4 CU-1?

5 **A.** Yes, as part of their billing  
6 of the CU-1 assessment, in trying to  
7 account for the amount that they billed by  
8 our 288 members, we uncovered that our  
9 business interruption insurance had  
10 proceeds that they are holding, and they  
11 never told us that those proceeds were  
12 awarded as a result of the business  
13 interruption insurance for the CU-1 space.  
14 But they did, at least from our  
15 accounting, applied those to the amounts  
16 of the CU-1 assessment, and billed the  
17 lesser amount to the members. But they  
18 did take the money, had kept it for the  
19 time since it was paid, which, I think,  
20 was 2018/2019, 'cause they just issued  
21 their financial statements in that regard  
22 that would allow us to see that.

23 **Q.** Okay. And for clarity, when  
24 you say "they" you are referring to Great  
25 Bay Condominium Association?

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1           **A.** That's correct.

2           **Q.** And the business interruption  
3 insurance proceeds you're talking about  
4 are specifically for the CU-1 lounge?

5           **A.** That's correct. And they are  
6 in the order of magnitude of a couple  
7 hundred thousand dollars.

8           **Q.** Now, since the last hearing  
9 before the court, have you received any  
10 written communications from Great Bay that  
11 relate to delinquent members?

12           **A.** Well, I think that they issued  
13 a court ordered rescinding of the  
14 invoices, and we got a memo on that.

15           **Q.** I was referring to any  
16 communication from them since the last  
17 hearing regarding special program for  
18 delinquent members?

19           **A.** Oh. Yes. Thank you, counsel.  
20 This past week we received a very unusual  
21 message. I believe it was really  
22 addressed to all members of the Great Bay  
23 Condominium Association which would  
24 include the residential two and three  
25 bedroom owners and the suite owners,

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1 saying that if they are pressured by the  
2 delinquency and tend not to pay their  
3 assessments, that they contact them and  
4 they will arrange for a realtor to work  
5 with them to sell their unit.

6 This is a program we've never  
7 seen before in the 20 years the club's  
8 been in process, but in that letter they  
9 refer to the lock-out, specifically that  
10 if the people are concerned about lock-out  
11 and just want to offload their assessment,  
12 they'll help facilitate getting someone to  
13 buy it for us.

14 ATTORNEY WENTZEL: I object  
15 to that testimony and move it be stricken.  
16 He's just testifying, paraphrasing to some  
17 document that we don't know what it is. I  
18 mean, let's have the best evidence.

19 THE COURT: Okay. All right.  
20 Thank you, Attorney Wentzel.

21 Attorney Hodge.

22 ATTORNEY TANKENSON HODGE:  
23 May we have permission to show the witness  
24 what's been marked Defendant's Exhibit Q;  
25 we filed it yesterday as an additional

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1 defendant's exhibit.

2 THE COURT: Yes.

3 **(Defendant's Exhibit Q shared.)**

4 ATTORNEY TANKENSON HODGE:

5 Can the parties see the document?

6 THE COURT: Yes.

7 **BY ATTORNEY TANKENSON HODGE:**

8 Q. Mr. Cutrona, can you see what  
9 has been marked for identification as  
10 Defendant's Exhibit Q?

11 A. Yes.

12 Q. Can you recognize it?

13 A. Oh, yeah. It is --

14 Q. What do you recognize it to  
15 be?

16 A. It is a memo from the Great  
17 Bay Condominium Association issued on  
18 December the 3rd, 2021, informing all  
19 members, again, just not suite owners but  
20 also the residential owners, that they are  
21 writing to inform us of a new program to  
22 pair up delinquent members who are looking  
23 to exit the club with the members in good  
24 standing interested in acquiring  
25 additional interest in the club. And it

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1 goes on to say that, given the annual  
2 maintenance fees were recently due on  
3 November 2nd. "Effective November 12, '21  
4 if a member did not pay their dues they  
5 were considered delinquent and were,  
6 quote, "'locked out' of using their time  
7 and privileges at the club until they  
8 became current." And it tells -- that  
9 explains to the member if they're one of  
10 those people what they have to do, what  
11 the program means to them and how they  
12 have to -- and where they have to submit  
13 their name.

14 **Q.** And was this e-mail sent to  
15 you directly?

16 **A.** That -- I think that is my  
17 e-mail. As it's -- you can see from the  
18 top it's to my e-mail sent directly by the  
19 he board of St. Thomas at aol dot com,  
20 which is the Great Bay Condominium  
21 Association board e-mail account.

22 **Q.** So to you understanding then,  
23 was this sent to all Great Bay association  
24 members and all -- including all  
25 Neighborhood Association members?

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1           **A.** That's based on the  
2 salutation, "Dear Ritz-Carlton Club, St.  
3 Thomas Members," I am assuming residential  
4 people got it as well as suite interest  
5 owners which are NA members.

6           **Q.** This program that this letter  
7 was describing that would pair up  
8 delinquent owners who were locked out of  
9 their unit and members in good standing,  
10 what is -- are you saying that is a new  
11 program?

12                   ATTORNEY WENTZEL: Objection.

13                   THE COURT: Overrule.

14           ATTORNEY WENTZEL: What the  
15 foundation is for him to testify about the  
16 program?

17           THE COURT: Overrule. He got  
18 the letter, it was sent to his e-mail.

19           ATTORNEY WENTZEL: Well, I  
20 didn't understand her to be asking him to  
21 read something in the letter. She's  
22 asking him to give -- to tell -- describe  
23 what the program is. If he's gonna read  
24 something I don't object to that.

25                   THE COURT: Overrule. I need

Direct - Mr. Cutrona

1 to hear what his understanding is of this  
2 new program.

3 **BY ATTORNEY TANKENSON HODGE:**

4 **Q.** So, Mr. Cutrona, would you  
5 tell us that?

6 **A.** Yeah, basically it appears  
7 that the board of the Great Bay  
8 Condominium Association seeing increased  
9 delinquencies that want to create a  
10 program to alleviate the pain of the  
11 lock-out by having members submit their  
12 name to them, who then they say will give  
13 to pre-approved realtors who will then put  
14 them with the -- and let them know which  
15 units are available and what potential  
16 pricing the individual owner might sell  
17 the interest for.

18 **Q.** And from the point of view  
19 from your Neighborhood Association members  
20 and as a member of the board, have you  
21 heard concerns from people about the  
22 effect on their unit value of being  
23 delinquent in this assessment for CU-1?

24 **A.** Oh, absolutely.

25 ATTORNEY WENTZEL: Objection.

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1 She's asking --

2 THE COURT: Sustained.

3 Sustained.

4 THE WITNESS: Absolutely. We  
5 got letters from several --

6 THE COURT: No, you cannot  
7 testify to that question, Mr. Cutrona.  
8 Sorry.

9 THE WITNESS: I'm sorry. I  
10 didn't hear that, judge.

11 **BY ATTORNEY TANKENSON HODGE:**

12 Q. Very good. So, from your  
13 point of view, Mr. Cutrona, does this memo  
14 from Great Bay suggest to you any reason  
15 why there might be a press to create  
16 delinquencies among your members?

17 ATTORNEY WENTZEL: Objection.  
18 Calling for speculation.

19 THE COURT: Sustained.  
20 Sustained.

21 ATTORNEY TANKENSON HODGE:  
22 Very well. Your Honor, I'd like to move  
23 the admission into evidence of Exhibit Q.

24 THE COURT: Any objections?

25 ATTORNEY WENTZEL: No.



1 THE COURT: Exhibit Q for the  
2 defendant is admitted.

3 **(Defendant's Exhibit Q admitted.)**

4 ATTORNEY TANKENSON HODGE:  
5 Actually, that's all I have for this  
6 witness, Your Honor.

7 THE COURT: Okay. Very well.  
8 Any cross-examination of Mr. Cutrona?

9 ATTORNEY WENTZEL: Yes, Your  
10 Honor. We're gonna be going at it for  
11 some time, could I request we can take  
12 this short break before I begin?

13 THE COURT: Yes, you may.  
14 Ten minutes.

15 ATTORNEY WENTZEL: Thank you.

16 **(Brief break was had.)**

17 THE COURT: Okay, are we  
18 ready, Attorney Wentzel?

19 ATTORNEY WENTZEL: Yes, Your  
20 Honor.

21 THE COURT: You may proceed.

22 **CROSS-EXAMINATION**

23 **BY ATTORNEY WENTZEL:**

24 Q. Mr. Cutrona, you testified on  
25 direct about this communication from GBCOA

Cross - Mr. Cutrona

1 to the suits owners about these CU-1  
2 assessments and that document is  
3 Defendant's Exhibit B. Can you put that  
4 in front of you.

5 **A.** Yes, sir.

6 ATTORNEY WENTZEL: And can we  
7 one on the screen.

8 THE WITNESS: I have it.

9 ATTORNEY WENTZEL: Mark?

10 THE COURT: Attorney  
11 Wilczynski? Attorney Wilczynski?

12 ATTORNEY WILCZYNSKI: I'm  
13 here, Your Honor. Sorry. Yes, I just  
14 move to share that document.

15 THE COURT: Okay.

16 ATTORNEY WILCZYNSKI: You  
17 should have it on the screen now.

18 **(Defendant's Exhibit B shared.)**

19 THE COURT: Yes.

20 **BY ATTORNEY WENTZEL:**

21 **Q.** All right. And let's go to  
22 the last page of Defendant's Exhibit B,  
23 page four. And, Mr. Cutrona, under direct  
24 exam you read the last sentence that we  
25 see on page four of Defendant's Exhibit B

**Cross - Mr. Cutrona**

1 which states, quote, "If the invoice is  
2 not paid in full within 30 days the  
3 Members Association will take further  
4 action as provided for in the  
5 Declarations." That's what you read;  
6 correct?

7 **A.** That's correct.

8 **Q.** This sentence is the only  
9 statement in NA's motion papers that  
10 refers -- that contains a statement by  
11 GBCOA concerning the consequences of not  
12 paying the CU-1 assessments; correct?

13 **ATTORNEY TANKENSON HODGE:**  
14 Well, I object, Your Honor, I don't think  
15 Mr. Cutrona could be expected to know  
16 everything that is said in the  
17 Neighborhood Association moving papers.

18 **THE COURT:** Overrule.

19 Mr. Cutrona, do you know?

20 **THE WITNESS:** Could you  
21 restate the question, I'm --

22 **BY ATTORNEY WENTZEL:**

23 **Q.** Yes. Isn't it true that this  
24 sentence that I just read, the last  
25 sentence on page four of Defendant's

Cross - Mr. Cutrona

1 Exhibit 2, this is the only statement by  
2 GBCOA about potential consequences of not  
3 paying the CU-1 assessments that are  
4 contained anywhere in NA's motion papers?

5 A. I'm not I understand when you  
6 say, "NA's motion papers," the papers we  
7 submitted.

8 Q. Yes.

9 A. Well, I think the paragraph  
10 above that sentence, counsel, is another  
11 place in your letter that says, you gonna  
12 be personally liable for all assessments,  
13 and the Member's Association may bring an  
14 action for money judgement against a  
15 delinquent member to collect those sums.  
16 I take that as another place in the memo  
17 where GBCOA state the -- just some of the  
18 provisions or actions you can take.

19 Q. Well, my question was a little  
20 different.

21 A. Okay.

22 Q. What the part you just read  
23 that's quoted from the declarations and  
24 the paragraph above this sentence that  
25 we're discussing, it's discussing what an

Cross - Mr. Cutrona

1 option that the GBCOA has to enforce the  
2 payment of assessments; right? An action  
3 for money damages.

4 **A.** That's just one of them.  
5 You've got several in the letter,  
6 counselor, where you talk about liens and  
7 other issues, so.

8 **Q.** Okay, but setting aside quotes  
9 from the declarations, the only statement  
10 that the GBCOA board of directors has made  
11 about its plans with respect to  
12 consequences of not paying the CU-1 dues  
13 is this statement saying it "will take  
14 further action as provided for in the  
15 Declarations"; correct?

16 **A.** I don't think it's, again,  
17 counselor, and all due respect, I don't  
18 think it's the only place in the letter  
19 you refer to -- you know, in page three  
20 you say, you know, member's -- and to  
21 enforce the provisions of the Declaration,  
22 you say it multiple times.

23 **Q.** Say what?

24 **A.** That you're going to enforce  
25 the provisions of the Declaration.

Cross - Mr. Cutrona

1           Q. Right. And the only statement  
2 about how GBCOA plans to do that is this  
3 statement that it will take, quote,  
4 "further action as provided for in the  
5 Declarations"; correct?

6           ATTORNEY TANKENSON HODGE: So  
7 I -- respectfully, judge, I object to the  
8 form of that question, that is not a  
9 question about how they are going to do  
10 it, it is -- the statement speaks for  
11 itself, but it certainly isn't the only  
12 place where they say how they're going to  
13 do it.

14           THE COURT: Overrule.

15           ATTORNEY TANKENSON HODGE:  
16 They don't say how they're going to do it.

17           THE COURT: Overrule.

18           Mr. Cutrona?

19           THE WITNESS: Yes, ma'am.  
20 Yes, Your Honor.

21           THE COURT: You need to  
22 answer the question.

23           THE WITNESS: I do not  
24 believe that that's the only place in the  
25 letter that they refer to the action

**Cross - Mr. Cutrona**

1 they're going to take, number one. And  
2 number two, the actions provided for in  
3 the Declaration, which is their statement  
4 that counselor is referring to, are broad  
5 and many as we tried to represent today of  
6 the actions they can take from renting to  
7 locking out, to liening, to, I don't want  
8 to repeat the obvious. So, I must say I  
9 have to take all of the provisions in the  
10 Declaration that in any way talk about  
11 actions that they can take which he refers  
12 to that they are provided for in the  
13 Declaration.

14 **BY ATTORNEY WENTZEL:**

15 Q. Mr. Cutrona, I'm not asking  
16 about what the Declaration say, I'm asking  
17 about statements by GBCOA concerning what  
18 it will do if the CU-1 assessments are not  
19 paid. Do you understand the difference?

20 ATTORNEY TANKENSON HODGE:  
21 Respectfully, judge, I don't understand  
22 the difference.

23 THE COURT: I think the  
24 question is clear, any specific action  
25 that the GBCOA will take in the event the

Cross - Mr. Cutrona

1 invoices are not paid within the 30-day  
2 period besides just a reference to the  
3 declarations.

4 Is that the question, Attorney  
5 Wentzel?

6 ATTORNEY WENTZEL: Yes, Your  
7 Honor.

8 THE COURT: Mr. Cutrona?

9 THE WITNESS: Yeah, Your  
10 Honor? In all due respect I'm confused  
11 how to answer other than to say, GBCOA  
12 made the statement to take further action  
13 as provided for in the Declaration.

14 **BY ATTORNEY WENTZEL:**

15 **Q.** And that's the only statement  
16 GBCOA has made about what it plans to do  
17 if the CU-1 assessments are not paid;  
18 correct?

19 **A.** Well, I have a hard time,  
20 counsel, as --

21 THE COURT: Okay, let's move  
22 on from this question because we don't  
23 want to keep going in circles.

24 ATTORNEY WENTZEL: Well,  
25 could I have an answer to it, judge, I



**Cross - Mr. Cutrona**

1 mean, I think the answer is yes, but if he  
2 can find another statement where GBCOA  
3 said what it plans to do I would like him  
4 to point to it.

5 THE COURT: All right. Can  
6 you, Mr. Cutrona?

7 THE WITNESS: I can't, Your  
8 Honor, right now without, you know,  
9 restudying this letter that's over a month  
10 and a half, you know, almost due. So, no.

11 **BY ATTORNEY WENTZEL:**

12 Q. Now, Mr. Cutrona, NA's motion  
13 for TRO and Preliminary Injunction is  
14 based on its assertion that you and the  
15 other NA members are being threatened with  
16 lock-out from your units if you don't pay  
17 the CU-1 assessments, isn't that true?

18 A. Yes.

19 Q. GBCOA has never said that to  
20 you or to any other member of the  
21 Neighborhood Association, isn't that true?

22 A. No, that's not true.

23 Q. Where did GBCOA tell you Mr.  
24 Cutrona that if don't pay these CU-1  
25 assessments within 30 days you're gonna be

Cross - Mr. Cutrona

1 locked out of your unit?

2 **A.** One example is the letter you  
3 just sent which said, you're gonna be  
4 locked out if you're delinquent from your  
5 assessments.

6 **Q.** What letter?

7 **A.** The letter that --

8 **Q.** Point to it for us.

9 **A.** I don't have it in front of  
10 me, counselor, it was the letter that was  
11 just exhibited and entered into the  
12 proceeding.

13 **Q.** Mr. Cutrona --

14 **A.** I think it had a date of  
15 September 3rd on it.

16 **Q.** -- you just testified -- you  
17 just said that GBCOA told had you  
18 personally that if you didn't pay the CU-1  
19 assessments you were gonna locked out of  
20 the unit. And I want to know, where in  
21 NA's motion papers that are before the  
22 Court, is that -- does that statement  
23 appear?

24 **A.** Counselor, you're right.  
25 There's nothing that says CU-1 assessment,

Cross - Mr. Cutrona

1 but there's plenty that alludes to payment  
2 of assessments.

3 Q. And you understand that there  
4 are general annual assessments that  
5 everybody pays whose an owner at Great Bay  
6 whether they own a suite or whether they  
7 own a residence; correct?

8 A. Yes, that's correct.

9 Q. And every statement in the  
10 materials that NA has submitted where it  
11 specifically talks about lock-out is in  
12 the context of those general annual dues,  
13 isn't that true?

14 A. No.

15 Q. Show me a place where lock-out  
16 is mentioned or threatened with regard to  
17 the CU-1 assessments that are at issue in  
18 your motion before the court.

19 ATTORNEY TANKENSON HODGE:  
20 Your Honor, I want to object to counsel  
21 interrupting Mr. Cutrona before he  
22 finishes his answers.

23 THE COURT: Okay. Very well.  
24 Attorney Wentzel, allow Mr. Cutrona to  
25 complete his answers, please.

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1                   ATTORNEY WENTZEL: I  
2 apologize, Your Honor.

3                   THE WITNESS: I don't think  
4 there is anywhere specifically other than  
5 what you've asked me already that refers  
6 to the CU-1 assessments. However --  
7 however, may I finish?

8 **BY ATTORNEY WENTZEL:**

9                   Q. Well, you've answered the  
10 question.

11                   ATTORNEY TANKENSON HODGE:  
12 No, excuse me.

13                   ATTORNEY WENTZEL: Your  
14 counsel --

15                   THE COURT: No, let him  
16 finish. Let him finish. Let him finish,  
17 Attorney Wentzel.

18                   You may finish.

19                   THE WITNESS: Thank you, Your  
20 Honor.

21                   The declarations that you refer  
22 to speak to assessments in the terms of  
23 regular assessments, which are the ones  
24 you're talking about which are annual  
25 assessments and special assessments. The

Cross - Mr. Cutrona

1 exhibit that Miss Leighton-Hermann refer  
2 to is used for special assessments as well  
3 as regular assessments. And -- so an  
4 individual who has learned, as she has  
5 said for ten years, that that is the  
6 assessment policy and the actions taken,  
7 concludes, very clearly, that the bill  
8 that GBCOA sent, like it sends its annual  
9 assessment for CU-1 assessment, will be  
10 handled the same way as a special  
11 assessment.

12 **BY ATTORNEY WENTZEL:**

13 **Q.** Where is there a document that  
14 Miss Leighton-Hermann referred to in her  
15 testimony that says what you just said,  
16 that the lock-out applies to special  
17 assessments?

18 **A.** The assessment policy as  
19 described and referred to in the  
20 declarations speaks to the regular  
21 assessment and special assessments being  
22 treated under the policy she outlines in  
23 that letter.

24 **Q.** I'm asking you to point us to  
25 the document that Miss Leighton-Hermann

Cross - Mr. Cutrona

1 testified about that refers to lock-out  
2 applying to special assessments.

3 **A.** It doesn't say special  
4 assessment, it generically says  
5 assessments.

6 **Q.** Okay. And the declarations  
7 that govern the entire condominium  
8 property, they give the GBCOA multiple  
9 remedies that it can use to address  
10 delinquent members who don't pay  
11 assessments; correct?

12 **A.** Way the declarations reads,  
13 counselor, and I'm not a lawyer and all  
14 due respect, all of the policies that we  
15 highlighted today are specific actions for  
16 delinquent assessments, whether it be --

17 **Q.** And my question, Mr. Cutrona,  
18 is, those declarations give different  
19 remedies that GBCOA can use to address  
20 members who don't pay their dues; correct?

21 **A.** That's correct.

22 **Q.** All right. And one of those  
23 remedies that the GBCOA can use under the  
24 declarations is an action for money  
25 judgement; correct?

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1           **A.** Yes.

2           **Q.** All right. And, in fact, you  
3 quoted the -- in Defendant's B on page  
4 four, you quoted a provision that says the  
5 Association, quote, "may bring an action  
6 for a money judgement against a delinquent  
7 Member to collect all sums due the  
8 Member's Association"; right?

9           **A.** Right.

10          **Q.** That's in the -- at the page  
11 we're looking at right here, the quote  
12 that's set out there, that's in the --  
13 starting in the second line, "and the  
14 Member's Association may bring an action  
15 for money judgement"; right?

16          **A.** I can't find it exactly, but  
17 --

18          **Q.** Okay. I want to make sure  
19 you're following me. You're looking at  
20 the screen?

21          **A.** Yes, sir, I'm looking at the  
22 screen.

23          **Q.** And you see the part where  
24 there's a quote from the Declaration, it's  
25 indented on the left and the right? It's

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1 right there in front of you; right?

2 A. Yes, sir, I see it.

3 Q. And if you -- why don't you  
4 read the first sentence of that quote.

5 A. "Each member of a Residence is  
6 personally liable for all assessments made  
7 against the Residence pursuant to this  
8 Declaration, and the Members Association  
9 may bring an action for a money judgement  
10 against a delinquent Member to collect all  
11 sums due the Members Association,  
12 including interest, late charges, costs,  
13 and reasonable attorney fees."

14 Q. Okay. And that's the part of  
15 the Declaration quoted immediately before  
16 the statement that we've read in the last  
17 paragraph -- the last sentence of the last  
18 paragraph that, "If an invoice is not paid  
19 in full within 30 days the Members  
20 Association will take further action as  
21 provided for in the Declarations."  
22 Correct?

23 A. Yes, sir.

24 Q. And one of the actions the  
25 declarations provide for is to bring an



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1 action for money judgement; right?

2 **A.** Yes, sir.

3 **Q.** And you don't have any  
4 personal knowledge as to what particular  
5 option the GBCOA board of directors has to  
6 enforce the CU-1 assessments; right?

7 ATTORNEY TANKENSON HODGE: So  
8 I object to the form of that question. I  
9 assume counsel meant to say, you don't  
10 have any knowledge which option they will  
11 choose.

12 ATTORNEY WENTZEL: Yeah,  
13 that's what I meant. I'm sorry.

14 THE COURT: Okay, so rephrase  
15 it. Okay. Thanks.

16 **BY ATTORNEY WENTZEL:**

17 **Q.** All right. You don't have any  
18 personal knowledge as to which option  
19 under the Declarations the GBCOA would  
20 choose for members who don't pay the CU-1  
21 assessments; correct?

22 **A.** That is correct. It would  
23 have been nice had you stated it.

24 **Q.** Did you ever after you got  
25 your invoice for CU-1 assessments and this

Cross - Mr. Cutrona

1 notice that we're looking at, Defendant's  
2 Exhibit B, did you ever inquire from  
3 anybody on the GBCOA board of directors,  
4 what are you gonna do if I don't pay the  
5 assessment?

6 **A.** I did not make that inquiry,  
7 no.

8 **Q.** Okay. You have all their  
9 e-mail addresses; correct?

10 **A.** Sure, and have the  
11 Declarations which is what you said I  
12 should refer to.

13 **Q.** And nobody from GBCOA ever  
14 sent you an e-mail or called you and said,  
15 if you don't pay these CU-1 assessments  
16 we're gonna lock you out, isn't that true?

17 **A.** Yeah, no one called me, sir.

18 **Q.** Or e-mailed you?

19 **A.** No one e-mailed me, sir.

20 **Q.** Or sent you any other  
21 communication saying, we're going to lock  
22 you out if you don't pay the CU-1  
23 assessment, huh?

24 **A.** Again, the only one -- the  
25 only two memos that I received that had

Cross - Mr. Cutrona

1 the word "lock-out" in were the October  
2 1st memo on all assessments that Marsha  
3 Leighton-Hermann discussed and your most  
4 recent e-mail suggesting that, if you are  
5 burdened by all these assessments, there's  
6 people that will buy your unit from you.

7 Q. Okay. Let's look at the memo  
8 Marsha Leighton-Hermann was referring to  
9 in her testimony, that's Defendant's  
10 Exhibit C.

11 A. Yes, sir.

12 Q. We'll wait for Mr. Wilczynski  
13 to put it up for the Court.

14 **(Defendant's Exhibit C shared.)**

15 ATTORNEY WILCZYNSKI: There  
16 it is.

17 ATTORNEY WENTZEL: We'll go  
18 to the first page.

19 All right. And, Mr. Cutrona,  
20 you heard Mrs. -- Mis Leighton-Hermann  
21 testify about Defendant's Exhibit C;  
22 correct?

23 A. Yes, sir.

24 Q. And you received a copy of  
25 Defendant's Exhibit C with your invoice

Cross - Mr. Cutrona

1 for the regular dues you owed for the  
2 2021/2022 season; correct?

3 **A.** Yes, sir.

4 **Q.** And this letter that Miss  
5 Leighton-Hermann referred to is what  
6 accompanied the invoice you received for  
7 the regular dues, not the CU-1 dues;  
8 correct?

9 **A.** Yes, sir.

10 **Q.** And you heard Mrs.  
11 Leighton-Hermann -- I'm sorry. You heard  
12 Miss -- I get a little tongue tied. You  
13 heard Miss Leighton-Hermann say that, with  
14 regard to the CU-1 assessments that are  
15 the subject of NA's motion, the  
16 Ritz-Carlton Club as the Management  
17 Company had nothing to do with it;  
18 correct?

19 **A.** Yes, sir.

20 **Q.** All right. Now, the GBCOA  
21 board of directors cannot by itself put a  
22 blacklist on the reservation system to say  
23 that certain members are gonna be locked  
24 out, isn't that true?

25 **A.** I don't know what you mean by

Cross - Mr. Cutrona

1 "a blacklist".

2 Q. To put an indication in the  
3 record in a member's reservation that they  
4 are locked out?

5 A. I don't agree with that.

6 Q. GBCOA board of directors does  
7 not have that ability, does it?

8 A. I think it does.

9 Q. Well, how does the GBCOA go  
10 into the reservation system and put a  
11 notation in there that somebody is locked  
12 out?

13 A. If you're talking about the  
14 procedural aspect of locking out on a  
15 computer system that communicates the  
16 lock-out to all members of the company,  
17 that's one question.

18 Q. That's what I'm talking about.

19 A. I don't think the board as  
20 astute they are have the capability to  
21 understand the procedure to do that, sir.

22 Q. Okay. They can't do it by  
23 themselves, they have to get the  
24 assistance of the Management Company to  
25 that; correct?

**Cross - Mr. Cutrona**

1                   ATTORNEY TANKENSON HODGE: I  
2                   object to the form of the question. I  
3                   don't think that question should assume  
4                   that the only one that could assist would  
5                   be the Management Company.

6                   THE COURT: The testimony of  
7                   Miss Leighton-Hermann went through this  
8                   process as to how a person is blacklisted.  
9                   So when the person shows up for a  
10                  reservation, the clerk would be able to  
11                  advise the person that they've been locked  
12                  out. That's my recollection of that  
13                  testimony.

14                 **BY ATTORNEY WENTZEL:**

15                         **Q.** Correct.

16                                 And, Mr. Cutrona, it's her  
17                                 employer, the Management Company, the  
18                                 Ritz-Carlton Club, that operates that  
19                                 reservation system and makes those marks  
20                                 in owner's reservation showing that they  
21                                 are locked out; correct?

22                                 **A.** No, it's not correct. It's  
23                                 the Cobalt Travel Company whose  
24                                 reservation procedures we exhibited  
25                                 earlier that does that.

Cross - Mr. Cutrona

1           **Q.** Okay. It's not the GBCOA  
2 board of directors though, we agree on  
3 that; correct?

4           **A.** The GBCOA board of directors  
5 has the authority to put in place policies  
6 and work with the Cobalt Travel Company to  
7 administer against those policies as they  
8 see appropriate and as they approve.

9           **Q.** I'm simply at this point  
10 trying to establish that GBCOA does not  
11 have the ability to go in and do that on  
12 its own, true?

13           **A.** Does not have the ability to  
14 go into their systems and do it, true.

15           **Q.** All right. And you have no  
16 knowledge that GBCOA board of directors  
17 ever directed or asked anyone from Cobalt  
18 to blacklist any members who didn't pay  
19 the CU-1 assessments, true?

20           **A.** True. I wouldn't --

21           **Q.** And you have no knowledge that  
22 anyone from GBCOA board of directors ever  
23 asked anyone from the management company  
24 to implement lock-out procedures for  
25 people who didn't pay the CU-1

Cross - Mr. Cutrona

1 assessments; correct?

2 **A.** The Management Company  
3 wouldn't have anything to do with the CU-1  
4 assessment; correct.

5 **Q.** And similarly, the GBCOA board  
6 of directors cannot go into the  
7 reservation system and rent out someone  
8 else's unit, true?

9 **A.** Boss, they have a rental --

10 **Q.** Now, let me take through this.  
11 The board of directors of the GBCOA are  
12 individuals just like you; correct?

13 **A.** Yes, sir.

14 **Q.** And they are volunteers like  
15 you are; correct?

16 **A.** Yes, sir.

17 **Q.** They are not employees of the  
18 Management Company, are they?

19 **A.** They are not.

20 **Q.** They are not employees of  
21 Cobalt Travel Company, are they?

22 **A.** No, sir.

23 **Q.** And they do their work, the  
24 GBCOA work of administering the  
25 condominium property mostly from their own



Cross - Mr. Cutrona

1 homes by phone and e-mail; correct?

2 **A.** Correct.

3 **Q.** And the individual directors  
4 of GBCOA don't have remote access to the  
5 Ritz-Carlton Club's reservation system, do  
6 they?

7 **A.** The GBCOA board?

8 **Q.** Right.

9 **A.** No, not that I know of, but  
10 they may if --

11 **Q.** But you can't say they do;  
12 right?

13 **A.** No, I can't say they do. I  
14 have no knowledge.

15 **Q.** Okay. And so, the directors  
16 in their homes in the states where they  
17 live, they can't go into the Ritz-Carlton  
18 Club reservation system and rent out  
19 somebody's unit to someone else, you agree  
20 with that, don't you?

21 **A.** No, because they give  
22 direction to the rental manager as to what  
23 he should do in that regard.

24 **Q.** All right. That's what I'm  
25 saying, Mr. Cutrona, they can't do it

Cross - Mr. Cutrona

1 themselves they have to give direction to  
2 the management company, the Ritz-Carlton  
3 Club or to Cobalt to do that; correct?

4 **A.** Yeah, that's correct, sir.

5 **Q.** And you have no personal  
6 knowledge that that ever occurred in this  
7 case; correct?

8 **A.** Correct.

9 **Q.** So, all your testimony about  
10 they have the ability to lock-out, they  
11 have authority to rent out someone else's  
12 units, those are just general propositions  
13 about authority they have under the  
14 Declarations; correct?

15 **A.** Correct.

16 **Q.** But you have no personal  
17 knowledge, and you can't tell the Court  
18 that GBCOA ever took one step to execute  
19 lock-out or renting out somebody's unit if  
20 they didn't pay the CU-1 assessments;  
21 correct?

22 **A.** I have no knowledge of that.

23 **Q.** And before you came to testify  
24 at this hearing, did you do anything to  
25 investigate whether in fact GBCOA had

Cross - Mr. Cutrona

1 taken any steps to enlist the Management  
2 Company or Cobalt Travel to lock-out any  
3 NA members who didn't pay the CU-1  
4 assessments? Did you investigate that at  
5 all?

6 **A.** No. And primarily because no  
7 one would give us information because the  
8 Management Company wasn't involved in the  
9 billing, the board did it directly with  
10 the billing company.

11 **Q.** But we've already --

12 **A.** So there was no one to go to.

13 **Q.** Well, you could have gone to  
14 the GBCOA directors themselves; right?

15 **A.** Right.

16 **Q.** You could have e-mailed Tom  
17 Doyle who is here today and said, Tom, are  
18 you guys gonna lock us out if we don't pay  
19 these CU-1 assessments? You could have  
20 done that, right?

21 **A.** Yes.

22 **Q.** And you didn't do that;  
23 correct?

24 **A.** That's correct.

25 **Q.** And you could have e-mailed

Cross - Mr. Cutrona

1 Abbey Chung the president of GBCOA and  
2 asked her the same question; right?

3 **A.** Yes. And the other two board  
4 members, that's correct.

5 **Q.** Okay. And you didn't ask any  
6 of the board members; correct?

7 **A.** No, sir, 'cause I relied on  
8 the declarations which where they pointed  
9 us to.

10 **Q.** Okay. And you relied on your  
11 own opinion of what GBCOA might do, not  
12 knowledge of what they were going to do;  
13 correct?

14 **A.** I didn't rely on my opinion, I  
15 relied on the Declarations to tell me what  
16 they could do.

17 **Q.** Okay. You're just testifying  
18 that lock-out is something they could do,  
19 you're not saying that they ever asked for  
20 it to be done; right?

21 **A.** I -- other than the general  
22 policy letter that we've already discussed  
23 of October 1st that states that's what  
24 they do when you don't pay your  
25 assessments on time within ten days.

Cross - Mr. Cutrona

1           **Q.** No, it -- you're talking about  
2 Exhibit -- Defendant's Exhibit C, I  
3 assume, is that correct?

4           **A.** Yes.

5           **Q.** Okay. And this doesn't relate  
6 to the CU-1 assessments as Marsha  
7 Leighton-Hermann testified; right?

8           **A.** I didn't hear her say that  
9 specifically.

10          **Q.** Okay. Well, the cover letter  
11 that's Defendant's Exhibit C is dated  
12 October 1; right?

13          **A.** Yes, sir.

14          **Q.** And you already testified that  
15 this is the cover letter that went out  
16 with the general annual dues not the CU-1  
17 dues; correct?

18          **A.** That's correct.

19          **Q.** And the document that went out  
20 with the CU-1 dues from the Great Bay  
21 Condominium Owner's Association is  
22 Defendant's Exhibit B; right?

23          **A.** That's correct.

24          **Q.** And the only statement in that  
25 document about what GBCOA is going to do

Cross - Mr. Cutrona

1 if the assessments aren't paid in 30 days  
2 is this statement on the last page of this  
3 exhibit that, quote, "If the invoice is  
4 not paid in full within 30 days the  
5 Members Association will take further  
6 action as provided for in the  
7 Declarations." Right?

8 **A.** Right.

9 **Q.** And right above that as we've  
10 already, not to beat a dead horse, the  
11 action that the declarations provide for  
12 quoted in the paragraph immediately  
13 preceding that isn't bringing an action  
14 for money damages; right?

15 **A.** That's quoted above it, yes.

16 **Q.** Now, you testified about  
17 Defendant's Exhibit S, this Seventh  
18 Amendment to -- Seventh Amended  
19 Reservation -- here. It says the -- it's  
20 titled, the Seventh Amended and Restated  
21 Reservation Procedures for Ritz-Carlton  
22 Club Membership Program; right?

23 **A.** Yes, sir.

24 **Q.** And in connection with this  
25 document you were talking about your

Cross - Mr. Cutrona

1 personal allocation coming up for the 2022  
2 member year, and that you have the week of  
3 February 4 reserved; right?

4 **A.** Yes, sir.

5 **Q.** All right. And so do I, so I  
6 look forward to seeing you there then.  
7 And you also said you have the week of  
8 February 11 reserved; correct?

9 **A.** Yes, sir.

10 **Q.** And July 8; correct?

11 **A.** Yes, sir.

12 **Q.** And you talk about, well, what  
13 would happen if you lost your allocation  
14 or if you were locked out you would have  
15 nowhere to stay and your plane tickets  
16 would be no good; right?

17 **A.** Yes, sir.

18 **Q.** It was a hypothetical about  
19 what would happen. No one has told you  
20 that you're gonna be locked out from your  
21 February 4 or your February 11 or your  
22 July 28 allocation, isn't that true?

23 **A.** That's correct.

24 **Q.** I want to ask you 'cause I'm  
25 not clear, you were testifying about

Cross - Mr. Cutrona

1 Defendant's Exhibit H and something about  
2 business interruption insurance proceeds.  
3 Do you recall that?

4 **A.** Yes, sir.

5 **Q.** And do I understand correctly  
6 that what you said is, the GBCOA when it  
7 billed the CU-1 assessments that are the  
8 subject of your motion, it billed the  
9 lesser amount because it credited those  
10 insurance payments, is that what you are  
11 saying?

12 **A.** It appears that way from the  
13 information I was able to receive to do a  
14 reasonableness test of the amount billed,  
15 yes, sir.

16 **Q.** Okay. So, you are not saying  
17 the GBCOA double billed something, are  
18 you?

19 **A.** I don't think I said that, no.

20 **Q.** Okay. I just want to make  
21 sure that it was clear. Now, you were  
22 asked about Defendant's Exhibit Q, if you  
23 could put that document in front of you.

24 ATTORNEY WILCZYNSKI: One  
25 moment, David, I've got to find it in the



1 e-mails.

2 THE COURT: Yes.

3 ATTORNEY WENTZEL: Take your  
4 time, Mark.

5 THE COURT: It's the most  
6 recent one, December 3rd, 2022 -- 2021.

7 ATTORNEY WILCZYNSKI: Your  
8 Honor, I'm sorry, I thought it was one of  
9 the ones that was provided today, Q, R, X  
10 and T.

11 THE COURT: Well, do you have  
12 it, Attorney Hodge? Well, it's -- it came  
13 from Attorney Hodge.

14 ATTORNEY HODGE: I have a  
15 copy I should be able to put up for you.

16 **(Defendant's Exhibit Q shared.)**

17 Is that shown on your screen?

18 THE COURT: Yes.

19 **BY ATTORNEY WENTZEL:**

20 Q. All right. Mr. Cutrona, you  
21 received this communication in your  
22 capacity as a member of the Great Bay  
23 Condominium Association; correct?

24 A. Correct.

25 Q. And you testified that it's

Cross - Mr. Cutrona

1 your understanding this went to all owners  
2 at the Great Bay Condominium, not just the  
3 suite owners; correct?

4 **A.** Correct.

5 **Q.** All right. And it --  
6 underlined in the first paragraph it says,  
7 "We are writing to inform you of a new  
8 program to pair up delinquent members  
9 looking to exit the club with members in  
10 good standing interested in acquiring  
11 additional interests in the club." Is  
12 that what it says?

13 **A.** That's what it says.

14 **Q.** Right. And then the next  
15 sentence says, "The 2021-22 Great Bay  
16 Condominium Association, Inc., GBCOA,  
17 annual maintenance fees were recently due  
18 on November 2, 2021." Did I read that  
19 sentence correctly?

20 **A.** Yes.

21 **Q.** And, do you understand this to  
22 be a reference to the general annual dues  
23 that everybody pays which are the subject  
24 of Marsha Leighton-Hermann's memo,  
25 Defendant's Exhibit C?

Cross - Mr. Cutrona

1           **A.** Because it -- yes.

2           **Q.** Okay. And then it says,  
3 "Effective November 12, 2021 if a member  
4 did not pay their dues they were  
5 considered delinquent and were locked out  
6 of using their time and privileges at the  
7 club until they became current." That  
8 statement also refers to people who didn't  
9 pay their general annual dues; correct?

10           **A.** Yeah, correct.

11           **Q.** And when it says, "Effective  
12 November 12", that's not the date of some  
13 policy that's implemented, there's a  
14 ten-day grace period everyone gets to pay  
15 their dues, their annual general dues;  
16 correct?

17           **A.** Correct.

18           **Q.** And the dues in this case were  
19 due November 2; right?

20           **A.** I believe so.

21           **Q.** Okay. And so, what happens on  
22 November 12 if you haven't paid your dues,  
23 your grace period has expired and you're  
24 gonna get subject to lock-out; right?

25           **A.** Correct.

Cross - Mr. Cutrona

1           **Q.** And again, this is referring  
2 not to the CU-1 dues but to the annual  
3 general dues that everybody pays; right?

4           **A.** It appears that way.

5           **Q.** All right. And did you pay  
6 your annual general dues for 2021 club  
7 year?

8           **A.** Yes, sir.

9           **Q.** So you're not gonna get locked  
10 out for not paying your dues, right?

11          **A.** I'm not sure about that.

12          **Q.** Has somebody told you you're  
13 gonna get locked for not paying -- even  
14 though you paid your annual dues?

15          **A.** No, but I'm not sure about  
16 that.

17          **Q.** All right. And this document  
18 is describing a program where delinquent  
19 members who expressed a desire to walk  
20 away from their ownership in the club and  
21 having a member in good standing who wants  
22 more weeks at the club take over their  
23 interest; right?

24          **A.** Right.

25          **Q.** And that happens all the time,

Cross - Mr. Cutrona

1 some people don't want their interest  
2 anymore, they don't want to pay the annual  
3 dues anymore, they'd rather give up their  
4 ownership interest, you know that's  
5 happened; correct?

6 **A.** It's happened, but I don't  
7 know that it happens all the time, so I  
8 wouldn't agree with that.

9 **Q.** Well, has that been something  
10 that has occurred, to your knowledge,  
11 during the time that you have been an  
12 owner at Great Bay Condominium?

13 **A.** I really wouldn't be  
14 purview(sic) to that --

15 **Q.** All right. That's fair. You  
16 yourself own multiple interest at the  
17 Great Bay Condominium; correct?

18 **A.** Yes, sir.

19 **Q.** All right. How many interest  
20 do you have?

21 **A.** I four interest in St. Thomas  
22 Club.

23 **Q.** All right. And are any of  
24 those suite interest, they are; right?

25 **A.** Yeah, we already discussed

Cross - Mr. Cutrona

1 that, yes.

2 Q. Okay. How many of your four  
3 interest are suite -- suite condo interest  
4 versus the residence condo interest?

5 A. One.

6 Q. One suite condo interest?  
7 Yes?

8 A. Yes, sir.

9 Q. Okay. And three residence  
10 condo interest; right?

11 A. Right.

12 Q. And other members who love the  
13 club like you, might also be interested in  
14 picking up another interest from somebody  
15 who wants to walk away from the club, you  
16 can understand that, right?

17 A. Yes, sir.

18 Q. And that's what Defendant's  
19 Exhibit Q appears to be talking about;  
20 correct?

21 A. Yes, sir.

22 Q. You testified that the purpose  
23 of CU-1 is to provide food and beverage  
24 services to the suite owners who own suite  
25 condo interests in the Heliconia and the

Cross - Mr. Cutrona

1 Gardenia buildings; right?

2 **A.** Yes, sir.

3 **Q.** And there a total of 24 suite  
4 condos in those two buildings; correct?

5 **A.** Correct.

6 **Q.** There's 12 in Gardenia and 12  
7 in Heliconia; correct?

8 **A.** Correct.

9 **Q.** And those units lack full  
10 sized kitchens like the residence  
11 interests have; right?

12 **A.** That's correct.

13 **Q.** And they lack full sized  
14 dining rooms as well; correct?

15 **A.** Correct.

16 **Q.** And they have little mini  
17 refrigerators instead of big full sized  
18 refrigerators; correct?

19 **A.** Correct.

20 **Q.** And if you lived in one of the  
21 other residence units, you have a large  
22 full sized kitchen and a full size dining  
23 area you could cook Thanksgiving dinner if  
24 you wanted and serve it to your friends;  
25 right?

1           **A.** Yes, sir.

2           **Q.** Okay.

3                   ATTORNEY TANKENSON HODGE:  
4           So, Your Honor, I'd like to object to this  
5           line of questions. I'm not sure if we're,  
6           like, now trying the primary case about  
7           whether or not the deed was valid, but I'm  
8           not sure how this line of questions would  
9           relate to the --

10                   THE COURT: To the TRO?

11                   ATTORNEY TANKENSON HODGE:  
12           Right. Correct.

13                   THE COURT: Okay.

14                   ATTORNEY WENTZEL: He just  
15           went to it on direct, Your Honor.

16                   ATTORNEY TANKENSON HODGE: I  
17           beg your pardon?

18                   ATTORNEY WENTZEL: He  
19           testified to what -- why the CU-1 serves  
20           food and beverages to these suite owners  
21           because they have small kitchens and --

22                   THE COURT: Yeah, at the last  
23           hearing. Yes, he did.

24                   ATTORNEY TANKENSON HODGE:  
25           But I think that was, like, a historic



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1 context, Your Honor, he's talking about  
2 years ago not current.

3 THE COURT: That's true, it  
4 was introductory.

5 ATTORNEY WENTZEL: Okay.

6 THE COURT: That's true.

7 ATTORNEY WENTZEL: I'll save  
8 this part for the merits trial.

9 THE COURT: Okay.

10 **BY ATTORNEY WENTZEL:**

11 Q. Now, you've testified  
12 extensively about the Declarations and the  
13 ones that are quoted in the memo from the  
14 GBCOA; correct?

15 A. Correct.

16 Q. And you testified about the  
17 Sixth Amendment to the Supplementary  
18 Declaration and the Seventh Amendment, and  
19 your affidavit extensively refers to  
20 various declarations; correct?

21 A. Yes.

22 Q. Let's take a look at the Fifth  
23 Amendment. This is Plaintiff's Exhibit 3.

24 THE COURT: Okay.

25 **(Plaintiff's Exhibit 3 shared.)**

Cross - Mr. Cutrona

1           **Q.** Now, just briefly for  
2 background, Mr. Cutrona, before I ask you  
3 specifically about the Fifth Amendment to  
4 the Declaration. These two buildings  
5 where the suite condo units are located  
6 used to be part of the hotel; correct?

7           **A.** Yes, sir.

8           **Q.** And it's where the hotel would  
9 put their guests that didn't want a  
10 regular room they wanted a suite; correct?

11          **A.** I think they called them club  
12 level.

13          **Q.** That's right. And when you  
14 got club level at the hotel you got food  
15 and beverage services; correct?

16          **A.** Typically, yes.

17          **Q.** All right. And that was  
18 provided in the lounge on the top of  
19 Building G, that's CU-1; right?

20          **A.** Yes.

21          **Q.** All right. And then after the  
22 other four buildings making up the  
23 Ritz-Carlton Club were all built and  
24 dedicated to the condo, the hotel decided  
25 to take these other two buildings it owned

1 and joined them to the Ritz-Carlton Club;  
2 right?

3 **A.** Right. Yes.

4 **Q.** All right. And Plaintiff's  
5 Exhibit 3, the Fifth Amendment to the  
6 Declaration, is the amendment that  
7 actually submitted Building G and CU-1 to  
8 the condominium; correct?

9 **A.** I can't see it all, but I  
10 assume that's correct.

11 **Q.** Well, if you look at the first  
12 -- I'm sorry, the second whereas clause on  
13 the first page of Plaintiff's Exhibit 3.

14 **A.** Yes, it says "G".

15 **Q.** All right. It says the,  
16 "Declarant desires to amend the  
17 Declaration pursuant to Article 9 -- 19  
18 thereof in order to submit to the  
19 Condominium the land, building and  
20 improvements relating to the Phase  
21 described herein, containing Building G."  
22 Right?

23 **A.** Yes.

24 **Q.** And then on the next page of  
25 Plaintiff's Exhibit 3 in paragraph two, it

**Cross - Mr. Cutrona**

1 says, "Building G will contain twelve (12)  
2 Residences and one (1) Commercial Unit."  
3 Right?

4 **A.** Yes.

5 **Q.** All right. And then paragraph  
6 five says, "All owners of Residences that  
7 are designated as a Two Bedroom Suite  
8 shall, in addition to being Members of the  
9 Condominium Association, be mandatory  
10 members of the Neighborhood Association  
11 whose sole purpose is to own and operate  
12 Commercial Unit CU-1, which shall be  
13 conveyed by the Declarant to the  
14 Neighborhood Association and utilized for  
15 the exclusive benefit of the occupants  
16 from time to time of the Two Bedroom  
17 Suites." Did I read that correctly?

18 **A.** Yes.

19 **Q.** You understand that what this  
20 is is a restrictive covenant that  
21 restricts the use of CU-1 to the suites  
22 owners and their occupants; right?

23 **ATTORNEY TANKENSON HODGE:** I  
24 object to the question it asks for a legal  
25 conclusion --

Cross - Mr. Cutrona

1 THE COURT: Sustained.

2 ATTORNEY WENTZEL: Your  
3 Honor, he testified --

4 THE COURT: Sustained.

5 **BY ATTORNEY WENTZEL:**

6 Q. Okay. All right.

7 You testified in your direct  
8 exam during the first session that there  
9 was an agreement that changed the use of  
10 CU-1 so that all of the members of GBCOA  
11 could use it not just the suite owners;  
12 correct?

13 A. Yes.

14 Q. And you mentioned that there  
15 were -- this agreement was reflected in  
16 various writings? Do you recall your  
17 testimony about that?

18 A. Yes.

19 Q. All right. Those writings are  
20 not in NA's motion papers related to this  
21 motion for TRO, are they?

22 A. I thought maybe y'all just  
23 submitted them for today's hearing.

24 Q. That's correct. They are not  
25 in NA's papers though; right?

Cross - Mr. Cutrona

1           **A.** They are not in the NA papers  
2 submitted to date, yes.

3           **Q.** Okay. Have you had a chance  
4 to look at Plaintiff's Exhibit 15,  
5 Plaintiff's Exhibit 16, and Plaintiff's  
6 Exhibit 17?

7           **A.** Yes, sir.

8           **Q.** All right. And tell us what  
9 these documents reflect?

10          **A.** Can you repeat the numbers,  
11 counselor, so I can respond.

12          **Q.** Yeah. Plaintiff's Exhibit 15  
13 is the first one.

14          **A.** Yep.

15          **Q.** Plaintiff's Exhibit 16.

16          **A.** Yep.

17          **Q.** And Plaintiff's Exhibit 17.

18          **A.** Yes.

19          **Q.** I'm not gonna belabor these  
20 and go through line by line, I just want  
21 you to tell me this, are these the  
22 agreements that you were referring to that  
23 broaden the excess of CU-1 to all the club  
24 members?

25          **A.** Yes.

Cross - Mr. Cutrona

1           **Q.** All right. And each one of  
2 these agreements is for a one-year term;  
3 correct?

4           **A.** Renew -- with a renewable  
5 option unless notified.

6           **Q.** All right. And in exchange  
7 for GBCOA membership at-large having  
8 access to the CU-1, GBCOA waived the CU-1  
9 dues or portion of them; correct?

10          **A.** In Exhibit 15 they waived a  
11 hundred percent of the CU-1 assessment.

12          **Q.** And in Exhibit 16 how much of  
13 the CU-1 assessment was waived to get  
14 access to the membership at-large?

15                   THE COURT: Before we go any  
16 further, Attorney Wentzel, are you -- do  
17 you still need Exhibit 3 on the screen?

18                   ATTORNEY WENTZEL: No, Your  
19 Honor, although I would like to move for  
20 admission of Exhibit 3 into evidence.

21                   THE COURT: Okay. All right.  
22 Is there any objection, Attorney  
23 Hodge --

24                   ATTORNEY TANKENSON HODGE:  
25 I'm sorry, Your Honor --

1 THE COURT: -- the Fifth  
2 Amendment?

3 ATTORNEY TANKENSON HODGE: I  
4 don't think this witness was the right one  
5 for that, so I'm gonna object.

6 THE COURT: We got the Sixth  
7 and the Seventh in through him.

8 ATTORNEY TANKENSON HODGE:  
9 Right. He authenticated those. But I  
10 don't think he was asked to authenticate  
11 this, and I don't think we got to point  
12 where it should have been admissible.

13 ATTORNEY WENTZEL: I think I  
14 did. He did say he recognized it, judge,  
15 but I'm happy to establish that.

16 THE COURT: I'm sorry?

17 ATTORNEY WENTZEL: I said, I  
18 think he did say that he recognized it as  
19 the Fifth Amendment, but I'm happy to  
20 establish that.

21 THE COURT: Okay. So let's  
22 go back to Exhibit 3 before we move on to  
23 15, 16 and 17.

24 **BY ATTORNEY WENTZEL:**

25 Q. All right.



Cross - Mr. Cutrona

1                   And, Mr. Cutrona, you do  
2 recognize Plaintiff's Exhibit 3 as a  
3 genuine copy of the Fifth Amendment to the  
4 Declaration; correct?

5                   **A.** Exhibit C?

6                   **Q.** No, Three.

7                   THE COURT: No, Plaintiff 3.

8                   ATTORNEY WENTZEL: Plaintiff  
9 3.

10                   THE COURT: The Fifth  
11 Amendment.

12                   THE WITNESS: The Fifth  
13 Amendment, yes. Yes.

14 **BY ATTORNEY WENTZEL:**

15                   **Q.** Okay. And at the top it has  
16 the -- you could see it has the stamp from  
17 the Recorder's Office; correct?

18                   **A.** Yes, sir.

19                   **Q.** This document was actually  
20 filed in the Recorder's Office on July 18,  
21 2006; right?

22                   **A.** Yes, sir.

23                   **Q.** And this the document that  
24 submitted the suites lounge to the  
25 condominium property; correct?

Cross - Mr. Cutrona

1           **A.** Yes, sir.

2                   ATTORNEY WENTZEL: All right,  
3 Your Honor, I move to have Plaintiff's  
4 Exhibit 3 admitted into evidence.

5                   THE COURT: All right,  
6 Attorney Hodge?

7                   ATTORNEY TANKENSON HODGE:  
8 No, very well, Your Honor, I agree that's  
9 a sufficient basis now.

10                  THE COURT: Okay. Very well,  
11 Plaintiff's Exhibit 3 is admitted.

12                   **(Plaintiff's Exhibit 3 admitted.)**

13 **BY ATTORNEY WENTZEL:**

14                  **Q.** And -- now going back, Mr.  
15 Cutrona, Plaintiff Exhibits 15, 16, and 17  
16 you were discussing are the agreements  
17 that allowed the GBCOA membership at-large  
18 to access the suites lounge; correct?

19                  **A.** Yes, sir.

20                  **Q.** All right. And you signed  
21 each of these documents; correct?

22                  **A.** Yes, sir.

23                  **Q.** And if you look at Plaintiff's  
24 Exhibit 17, you sign this one on November  
25 1, 2015; correct?

Cross - Mr. Cutrona

1           **A.** Yes, sir.

2           **Q.** And it was for a one-year  
3 period from November 1, 2015 to November  
4 1, 2016; correct?

5           **A.** Yes, sir.

6           **Q.** And after that one-year period  
7 expired, there were no more agreements  
8 signed between GBCOA and NA about sharing  
9 access to the suites lounge; correct?

10                   ATTORNEY TANKENSON HODGE:

11 I'm sorry, we're not seeing these exhibits  
12 on the screen. What exhibit number was it  
13 that counsel was asking about that had the  
14 2015 end date?

15                   THE COURT: Seventeen.

16 Exhibit 17.

17                   Could you put it up on the  
18 screen?

19                   ATTORNEY WENTZEL: Fifteen --  
20 yeah, it's Exhibit -- yeah, the one we're  
21 talking about now is Exhibit 17.

22                   **(Plaintiff's Exhibit 17 shared.)**

23                   ATTORNEY TANKENSON HODGE:

24 Okay. Thank you.

25 **BY ATTORNEY WENTZEL:**

Cross - Mr. Cutrona

1           **Q.** And, Mr. Cutrona, so the  
2 record's clear, this is the third yearly  
3 agreement that GBCOA and NA signed to give  
4 the GBCOA the membership at-large access  
5 to CU-1; correct?

6           **A.** It's the Second Amendment to  
7 the Resident Owner Agreement.

8           **Q.** And --

9           **A.** It would be the third agreement,  
10 exactly, but it is called the Second  
11 Amendment to the Residence Owners  
12 Agreement; correct?

13          **Q.** Yes. Thank you. And it  
14 expired, I believe you've already  
15 testified, on November 1, 2016?

16          **A.** No, I believe it's November  
17 the 3rd, 2016 as noted in Article 1.

18          **Q.** Okay. Thank you for clearing  
19 that up.

20          **A.** Sure.

21          **Q.** After that period expired, no  
22 more agreements were signed between GBCOA  
23 and NA to give the GBCOA membership  
24 at-large access to CU-1; correct?

25          **A.** That is correct. Because it

**Cross - Mr. Cutrona**

1 was planning to transfer the CU-1 deed to  
2 them effective 12-30-2016.

3 **Q.** And no agreement was ever  
4 reached on the terms of that planned  
5 transfer; correct?

6 **A.** It was reached and agreed to  
7 and I executed it based on their approval  
8 until they came back and said they wanted  
9 all of our members money as well, and that  
10 cleared the deal.

11 **Q.** No one from GBCOA signed that  
12 agreement that you just talked about;  
13 correct?

14 **A.** No. The authority was placed  
15 with Miss Abbey Chung who communicated it  
16 to me based on final changes, and I  
17 executed it and sent it to her. Then we  
18 were said, well, wait a minute we want  
19 your money too.

20 **Q.** And Miss Chung did not sign  
21 the agreement; correct?

22 **A.** That's correct.

23 **Q.** And did I -- do I understand  
24 correctly you have a law degree, Mr.  
25 Cutrona?

Cross - Mr. Cutrona

1           **A.** No, I do not have a law  
2 degree.

3           **Q.** Okay, that was me --

4           **A.** I have an honoris causa doctor  
5 of laws degree but I don't think that that  
6 would qualify me before the court.

7           **Q.** Okay. I had some different  
8 information. Prior to 2017 all of the  
9 cost and expenses related to the  
10 Commercial Unit CU-1 were paid by the  
11 suite owners who are the members of the  
12 Neighborhood Association; correct?

13                   ATTORNEY TANKENSON HODGE:  
14 Prior to what date, please, counsel?

15                   ATTORNEY WENTZEL: 2017.

16                   THE WITNESS: That's correct.

17 **BY ATTORNEY WENTZEL:**

18           **Q.** And, during that time it was  
19 the Neighborhood Association that owned  
20 CU-1; correct?

21           **A.** That's correct.

22           **Q.** And even though the members of  
23 the Neighborhood Association did not own  
24 CU-1, they nevertheless paid all the cost  
25 and expenses relating to CU-1; correct?

Cross - Mr. Cutrona

1           **A.** Can you repeat that question,  
2 I want to make sure I answer it correctly?

3           **Q.** Yes.

4           **A.** Thank you.

5           **Q.** Even though you testified that  
6 prior to 2017 all the cost and expenses of  
7 CU-1 were paid by the suite owners who are  
8 members of the Neighborhood Association;  
9 right?

10          **A.** That's correct.

11          **Q.** And during that period of time  
12 from 2006 when CU-1 was submitted to the  
13 condo, all the way through 2016, the  
14 Neighborhood Association was the owner of  
15 CU-1; right?

16          **A.** That's correct.

17          **Q.** And even though the individual  
18 members of The Neighborhood Association,  
19 the suite owners did not own CU-1, they  
20 paid all of the cost and expenses relating  
21 to CU-1? You know that, don't you?

22          **A.** Can you repeat that or  
23 rephrase it for me?

24          **Q.** Okay. Are you having some  
25 difficulty with a part of it?

Cross - Mr. Cutrona

1           **A.** I'm trying --

2           **Q.** I want to make sure I address  
3 your --

4           **A.** I'm trying to understand the  
5 question, sir, if you can repeat it,  
6 please.

7           **Q.** Okay. From 2006 to 2016 --

8           **A.** Yes, sir.

9           **Q.** -- the members of The  
10 Neighborhood Association did not own CU-1,  
11 NA owned it; correct?

12           **A.** Yes, sir.

13           **Q.** And during that ten-year  
14 period the suite owners, the members of  
15 The Neighborhood Association paid all the  
16 cost and expenses of CU-1; right?

17           **A.** They paid their neighborhood  
18 assessments which included the CU-1  
19 assessment.

20           **Q.** Okay. And the suite owners  
21 paid a second level of assessments, they  
22 paid the general assessments that all  
23 members of GBCOA have to pay every year;  
24 correct?

25           **A.** That's for the residential



Cross - Mr. Cutrona

1 interest not for the Commercial Unit.

2 Q. Right. The Commercial Unit  
3 was the second layer of assessments that  
4 the suite owners paid; right?

5 A. If they paid their  
6 neighborhood association assessments  
7 annually, that's correct.

8 Q. And the invoices for those to  
9 the suites owners came from who?

10 A. The Neighborhood Association  
11 assess annually the suite owners.

12 Q. Okay. So they got an invoice  
13 for their regular dues from GBCOA, and  
14 they got a second invoice from NA for the  
15 CU-1 dues; right?

16 A. That's correct.

17 Q. And they knew that would be  
18 the case when they bought their interest;  
19 they signed up for it; right?

20 A. At that time, yes.

21 Q. Okay.

22 Your Honor, could I have maybe  
23 five minutes to confer with my co-counsel  
24 and my client. I may be finish with the  
25 witness but I want to confer if I could?

Cross - Mr. Cutrona

1 THE COURT: Okay. Yes, you  
2 may.

3 ATTORNEY WENTZEL: Thank you.

4 THE COURT: But before you  
5 do, so the only exhibit that you referred  
6 to just now or that was on the screen was  
7 Exhibit 17.

8 ATTORNEY WENTZEL: I'm sorry,  
9 Your Honor, let me clear that up.

10 THE COURT: Fifteen, 16, and  
11 --

12 ATTORNEY WENTZEL: I did  
13 refer, and I believe Mr. Cutrona looked at  
14 Plaintiff's Exhibit 15, Plaintiff's  
15 Exhibit 16, and Plaintiff's Exhibit 17.

16 Is that true, Mr. Cutrona?

17 **A.** That is correct.

18 **Q.** All right. And you said each  
19 of these documents has your signature?

20 **A.** That -- my signature is on  
21 those three agreements, yes.

22 **Q.** All right. And as we said,  
23 these are the three agreements that  
24 granted access in exchange for a fee to  
25 the GBCOA membership at-large; right?

1           **A.** That's correct, sir.

2           ATTORNEY WENTZEL: All right,  
3 Your Honor, I would move for admission of  
4 Plaintiff's Exhibit 15, Exhibit 16, and  
5 Exhibit 17.

6           THE COURT: Attorney Hodge?

7           ATTORNEY TANKENSON HODGE: No  
8 objection, Your Honor.

9           THE COURT: Okay. So  
10 Plaintiff's Exhibit 15, 16, and 17 are  
11 also admitted. All right, five minutes.

12           ATTORNEY WENTZEL: Thank you.

13           **(Plaintiff's Exhibits 15, 16, and 17**  
14           **admitted.)**

15           **(Brief recess was had.)**

16           THE COURT: Attorney Wentzel?

17           ATTORNEY WENTZEL: Your  
18 Honor, just gonna have one evidentiary  
19 item --

20           THE COURT: Sure.

21           ATTORNEY WENTZEL: -- before  
22 I pass the witness back for any redirect.

23 **BY ATTORNEY WENTZEL:**

24           **Q.** Mr. Cutrona --

25           THE COURT: Just one minute,

Cross - Mr. Cutrona

1 Attorney Hodge isn't available.

2 ATTORNEY WENTZEL: Oh, I'm  
3 sorry, Your Honor.

4 Mark, we're gonna go with  
5 Plaintiff's 9.

6 THE COURT: Okay. All right.  
7 We're ready.

8 **BY ATTORNEY WENTZEL:**

9 Q. Mr. Cutrona, do you have  
10 Plaintiff's Exhibit 9?

11 ATTORNEY TANKENSON HODGE:  
12 Could we have it on the screen?

13 ATTORNEY WENTZEL: It's  
14 coming.

15 THE COURT: Yes.

16 **(Plaintiff's Exhibit 9 shared.)**

17 ATTORNEY WILCZYNSKI: I think  
18 you should see it.

19 ATTORNEY WENTZEL: Yeah, go  
20 to the next page, that's just the cover.

21 Do you have Exhibit 9 there with  
22 you, Mr. Cutrona?

23 ATTORNEY TANKENSON HODGE: I  
24 think when I --

25 Q. It's all right. Mr. Cutrona,

Cross - Mr. Cutrona

1 let's just -- I'll just refer you to the  
2 document that's on the screen.

3 ATTORNEY WILCZYNSKI: Let me  
4 know what page you want me to go to,  
5 David.

6 ATTORNEY WENTZEL: I want to  
7 see the top of this page.

8 I can't see Mr. Cutrona anymore.

9 MR. THOMAS DOYLE: He's  
10 muted.

11 ATTORNEY WENTZEL: I can't  
12 see him neither.

13 ATTORNEY WILCZYNSKI: He's  
14 on.

15 THE COURT: Mr. Cutrona?

16 THE WITNESS: Yes, Your  
17 Honor, I'm here.

18 THE COURT: Okay.

19 **BY ATTORNEY WENTZEL:**

20 **Q.** Okay, there you are. Thank  
21 you. And, Mr. Cutrona, do you recognize  
22 Plaintiff's Exhibit 9 as the Great Bay  
23 Condominium Declaration?

24 **A.** I do.

25 **Q.** It's the original declaration

Cross - Mr. Cutrona

1 that started the Great Bay Condominium;  
2 correct?

3 **A.** Yes.

4 **Q.** And you could see on the top  
5 it has of the stamp from the Virgin  
6 Islands Recorder of Deeds, and the stamp  
7 shows it was filed on May 31, 2002? Do  
8 you see that?

9 **A.** Yes, sir.

10 **Q.** And then this is the original  
11 declaration and then other documents you  
12 referred to today are amendments of this  
13 declaration; correct?

14 **A.** Yes, sir.

15 **Q.** And the original plus all the  
16 amendments comprise the whole of the  
17 declarations that govern the property, is  
18 that fair?

19 **A.** That's fair.

20 ATTORNEY WENTZEL: Your  
21 Honor, I would move for Plaintiff's  
22 Exhibit 9 into evidence.

23 THE COURT: Any objections?

24 ATTORNEY TANKENSON HODGE: No  
25 objection.

1 THE COURT: All right,  
2 Plaintiff's Exhibit 9 is admitted.

3 **(Plaintiff's Exhibit 9 admitted.)**

4 ATTORNEY WENTZEL: All right,  
5 and with that, Your Honor, I'm gonna turn  
6 the witness over for any redirect.

7 THE COURT: Very well.

8 ATTORNEY TANKENSON HODGE:  
9 Thank you. Can we take that down?

10 THE COURT: Yes.

11 **REDIRECT EXAMINATION**

12 **BY ATTORNEY TANKENSON HODGE:**

13 Q. So, Mr. Cutrona, I wanted to  
14 begin by asking you a few questions about  
15 -- is he with us? Okay. I wanted to  
16 begin by asking a few questions about the  
17 line of questions that Attorney Wentzel  
18 raised with you about a period of time  
19 when Neighborhood Association assessed  
20 your members with costs related to  
21 operation and maintenance of the CU-1  
22 lounge, you remember those questions?

23 A. Yes.

24 Q. Okay. And was the  
25 Neighborhood Association during the period

**Redirect - Mr. Cutrona**

1 before September of 2017 the owner of the  
2 CU-1 lounge?

3 **A.** Yes.

4 **Q.** And during that period of time  
5 did your association incur cost and  
6 expenses to maintain and operate the  
7 lounge?

8 **A.** Yes.

9 **Q.** And during that time did you  
10 also receive from Great Bay an assessment  
11 to Neighborhood Association as the owner  
12 of CU-1 for your annual maintenance and  
13 common charges for that unit to be paid  
14 just as people who own residential units  
15 got assessments?

16 **A.** Yes, we did.

17 **Q.** And when NA got that  
18 assessment from Great Bay for the  
19 commercial lounge during the time that you  
20 owned the unit, did you assess to your  
21 members their prorated share of that as  
22 part of their cost of being members in the  
23 association that owned the unit?

24 **A.** Yes, we did.

25 **Q.** And there came a time, as I



1 understand it, and around September of  
2 2017 that you deeded CU-1 to Great Bay, is  
3 that right?

4 **A.** What was the date you gave,  
5 counsel?

6 **Q.** September 2017.

7 **A.** Yes.

8 **Q.** And from the time that you  
9 delivered your deed to Great Bay for CU-1,  
10 did you have any further expenses to  
11 operate the unit?

12 **A.** Prior to that date?

13 **Q.** No, after it. After that date  
14 did you have any more expenses --

15 **A.** No, we did not.

16 **Q.** And after that date did you  
17 pay any assessments to Great Bay for being  
18 the owner of the CU-1?

19 **A.** No, we did not.

20 **Q.** And by "you" I mean  
21 Neighborhood Association.

22 **A.** NA.

23 **Q.** NA. And so from that time  
24 forward from 2017 when you deeded the unit  
25 to Great Bay, did you have any assessment

**Redirect - Mr. Cutrona**

1 to your owners of the cost of maintaining  
2 that unit or of any assessment of their  
3 share of common charges for CU-1?

4 **A.** No.

5 **Q.** Did there come a time after  
6 you deeded the unit to Great Bay that the  
7 Management Company actually sent you a  
8 bill for an assessment as if you were  
9 still the owner?

10 **A.** Yes, they did.

11 **Q.** And what did you do in  
12 response?

13 **A.** We reviewed it with counsel  
14 for the Association, which was yourself,  
15 And we responded back to that company who  
16 was the one who sent it to us, that the  
17 deed had been transferred, it had been  
18 recorded, and as such we no longer as the  
19 Neighborhood Association owned title to  
20 CU-1 and that they should direct it to the  
21 Great Bay Condominium Association for  
22 payment.

23 **Q.** And from that date to this,  
24 has Neighborhood Association paid any  
25 assessment for CU-1 from the time when you

Redirect - Mr. Cutrona

1 no longer had title?

2 **A.** NA has not made any payments  
3 since the deed has been transferred.

4 **Q.** Did you consider there was any  
5 basis to assess your members for that?

6 **A.** Absolutely not.

7 **Q.** Now, you were also asked about  
8 the exhibits that were marked 15 through  
9 17 that were agreements for shared use of  
10 the lounge with Great Bay members, could  
11 you just briefly describe for the Court  
12 what led to those agreements.

13 **A.** Those agreements were codified  
14 to support the agreement we had with Great  
15 Bay prior to actually doing a  
16 refurbishment and reconstruction of the  
17 entire CU-1 space, whereby that the only  
18 way we as a 288 member unit could afford,  
19 do what needed to be done in a  
20 refurbishment, that they would have to  
21 give us relief on the CU-1 assessment.  
22 Because the CU-1 assessment under our  
23 declarations would have to be billed and  
24 paid, Mr. John Doyle then president and  
25 also an esquire, said we need to codify

Redirect - Mr. Cutrona

1 what we call the Residence Access  
2 Agreement to use the space and will make  
3 the amount equal to whatever the annual  
4 assessment for CU-1 is, which would then  
5 in our books net to zero and we would only  
6 be assessing then for the cost of the food  
7 and operation and maintenance of the  
8 facility.

9 That agreement that we had  
10 verbally was for that to be a permanent  
11 agreement at the full amount. We got one  
12 year, then they -- because it was doing  
13 well they said, well, we're bringing it  
14 back to 50 percent, so we only got 50  
15 percent of the assessment. And in the  
16 third year, I think, it was at 50 percent.  
17 And then we had gotten the restaurant to  
18 the way it needed to be, and we had agreed  
19 verbally that that would be the last  
20 agreement because we would transfer  
21 effective 12-30-2016 the CU-1 deed to The  
22 Neighborhood -- to the Great Bay  
23 Association.

24 Q. So from November of 2016 when  
25 the last of those agreements expired, and

Redirect - Mr. Cutrona

1 September 2017 when you deeded title to  
2 the unit to Great Bay, how was the use of  
3 CU-1 lounge handled?

4 **A.** It was all controlled by the  
5 Great Bay Association through the  
6 Management Company who was on site.  
7 Remember, this is post Irma and Maria, and  
8 so --

9 **Q.** Before -- I'm sorry, I want to  
10 ask you about before Irma and Maria. I'm  
11 gonna ask you between November 2016 when  
12 the last of those agreements expired,  
13 Exhibit 17, and September 2017 when you  
14 transferred the deed. So most of that  
15 would have been before Irma and Maria;  
16 right, those were --

17 **A.** That's correct. And your  
18 question in that period, if you could --

19 **Q.** Yes, how was use and  
20 management of the lounge handled?

21 **A.** It was normal. In fact, we in  
22 preparation for the transfer we had agreed  
23 that we would have a joint committee for  
24 oversight of the CU-1. And Mr. Doyle  
25 whose present here today, along with

**Redirect - Mr. Cutrona**

1 another one of his members who used to be  
2 an NA member on our board, joined us in  
3 monthly meetings to provide oversight. I  
4 would assume we had one in, I don't know  
5 for sure, but I would assume we had one  
6 in, you know -- prior to 9-2017 we had the  
7 monthly 'cause we were then working on the  
8 deed transfer agreement as part of those  
9 operation matters.

10 **Q.** So am I correct in  
11 understanding that you were, like, sharing  
12 management of the lounge during that  
13 period with Great Bay?

14 **A.** Yes.

15 **Q.** Now, so there came a time then  
16 that you gave them the deed in September  
17 2017, and from that point on you have  
18 indicated you didn't pay assessments.  
19 When you got the memo from Great Bay, that  
20 is Exhibit B, the memo of October 22nd,  
21 2021, what period of time did they purport  
22 to assess your members for dues for CU-1?

23 **A.** They went back to the 20- club  
24 year. Remember, in 2016 we had paid the  
25 assessment under that agreement, and so

1 they went back to the beginning of club  
2 year 2017, which would have been December  
3 of 2017 and they billed that period as  
4 they would normally as part of the CU-1  
5 annual assessment.

6 Q. And in addition to 2017 did  
7 they bill additional years to your  
8 members?

9 A. Yes, they did. Each year  
10 subsequent to that they billed but with  
11 clarification to the Management Company.  
12 On the transfer of the deed the Management  
13 Company rendered the bill to both parties,  
14 GBCOA --

15 Q. Oh, no, I'm sorry. I'm  
16 confusing. I'm talking about the invoice  
17 from Great Bay to your members that is  
18 Exhibit A, in this case, for dues for  
19 CU-1. Do you have Exhibit A?

20 A. I do.

21 Q. Can I put it -- shall I put it  
22 up?

23 A. No, I have it.

24 Q. What years did Great Bay bill  
25 your members for common charges or

1 maintenance fees for CU-1?

2 **A.** Based on the information we  
3 were able to get after the bill was  
4 received, meaning based on the information  
5 the NA board was able to get from the  
6 Management Company and our own records of  
7 the annual bills, we satisfied ourselves  
8 that the per interest, that is per suite  
9 interest --

10 **Q.** Oh, I'm sorry again. I'm just  
11 asking you, what years did the invoice  
12 from Great Bay to your members charge them  
13 for? What calendar years?

14 **A.** The club year 2017, the club  
15 year 2018, the club year 2019, the club  
16 year 2020, and the club year 2021, I  
17 believe. Five years.

18 **Q.** So all those five years were  
19 billed to your members in this invoice  
20 from Great Bay at the beginning of -- in  
21 October 22nd, 2021?

22 **A.** That's correct.

23 ATTORNEY TANKENSON HODGE:  
24 May we have permission to show the witness  
25 Exhibit B again, Your Honor.



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THE COURT: Yes, you may.

**(Defendant's Exhibit B shared.)**

**BY ATTORNEY TANKENSON HODGE:**

**Q.** Can you see the exhibit, Mr. Cutrona?

Can the parties see it?

**A.** I see it.

**Q.** Okay. So, this is a memo that you previously testified about from Great Bay to your members that accompanied your invoice for the CU-1 annual maintenance fees for those years you just mentioned; correct?

**A.** That's correct.

**Q.** And in this memo at the last paragraph, is it correct that Great Bay referred to the enclosed invoices representing delinquent assessments relating to CU-1 due immediately?

**A.** That's correct.

**Q.** And about that time, just the previous month, you had -- is it correct as I understand it, that you had received a memo from the Ritz-Carlton Club indicating that delinquent assessments

1 would be subject to various penalties  
2 including the possibility of lockout, is  
3 that right?

4 **A.** That's correct.

5 **Q.** And you were asked whether you  
6 decided or you e-mailed any of the GBCOA  
7 board members to ask them whether they  
8 were really planning to lock you out or  
9 not, and you said you didn't. But you did  
10 identify a letter, I believe it's Exhibit  
11 H, that you authorized your attorney to  
12 send to Great Bay after these invoices  
13 were received?

14 May we show the witness Exhibit  
15 H, Your Honor?

16 THE COURT: Yes.

17 **(Defendant's Exhibit H shared.)**

18 **BY ATTORNEY TANKENSON HODGE:**

19 **Q.** Can you see the letter dated  
20 November 3rd, Mr. Cutrona?

21 **A.** I do.

22 **Q.** I believe you previously  
23 identified that as a letter you had your  
24 lawyer send to Great Bay. And who was the  
25 actual person that this letter was

1 addressed to?

2 **A.** It was addressed to the  
3 president of the Great Bay Condominium  
4 Owners Association, Miss Abbey -- Abigail  
5 Chung.

6 **Q.** So one of the board members  
7 that counsel was asking you about, is that  
8 right?

9 **A.** Yes.

10 **Q.** And in this letter, I'd like  
11 to just direct your attention to the last  
12 paragraph, did you counsel indicate that  
13 your understanding was that this  
14 assessment was coupled with a threat to  
15 exclude your members from use and  
16 occupancy of their unit?

17 **ATTORNEY WENTZEL:** Objection,  
18 Your Honor, she's asking the witness to --  
19 for his personal interpretation of  
20 statements made by counsel, which are  
21 themselves not evidence.

22 **ATTORNEY TANKENSON HODGE:**  
23 Okay, I'll let him read -- if I may, Your  
24 Honor, I just ask the witness to read the  
25 first sentence of the last paragraph.

1 THE COURT: Okay.

2 ATTORNEY WENTZEL: Okay, I  
3 object to that, Your Honor, 'cause it's  
4 being offered for the truth of the matter  
5 asserted. It's a hearsay document, it's  
6 not subject to an exception, and the  
7 statements of lawyers are not evidence.  
8 In reading the statement about --

9 THE COURT: But the statement  
10 -- yeah, but this statement -- well, I  
11 guess the underlying presumption is that  
12 it's a statement that not she generated on  
13 her own, but that based upon information  
14 he provided to her for her to generate  
15 this letter.

16 ATTORNEY WENTZEL: I think  
17 that foundation has not been laid, I think  
18 we need --

19 ATTORNEY TANKENSON HODGE: So  
20 if I could clarify, Your Honor, this is  
21 actually not offered for the truth of the  
22 matter asserted, although obviously we do  
23 contend it's true that there was this  
24 threat. The purpose of this line of  
25 questions is to respond to Mr. Wentzel's

1 questions to Mr. Cutrona that he could  
2 have just e-mailed the GBCOA board members  
3 and ask them if they really meant to lock  
4 them out. And offering this -- part of  
5 this letter is intended to show that  
6 Neighborhood Association had their lawyer  
7 send a letter to Great Bay, president of  
8 the Great Bay Association, specifically  
9 referring to this understanding.

10 THE COURT: Okay, I will  
11 allow it.

12 **BY ATTORNEY TANKENSON HODGE:**

13 Q. So, Mr. Cutrona, I'm just  
14 gonna ask you for the record to read the  
15 first sentence of the last paragraph.

16 A. "By virtue of your improper  
17 assessment of these charges to NA suite  
18 owners, coupled with your threat to  
19 exclude them from use and occupancy of  
20 their suites as a penalty if they fail to  
21 comply with your improper demand, we now  
22 call upon you to immediately rescind both  
23 your invoices and your memorandum to NA  
24 owners, and to do so within 24 hours of  
25 this demand."

1           **Q.** Thank you. So after this  
2 letter was sent, did any member of the  
3 GBCOA board e-mail you and say, we don't  
4 have any intention of evicting you or  
5 locking you out or doing anything bad to  
6 you?

7           **A.** No. I received no  
8 communication from any member of the GBCOA  
9 board after that letter or before.

10           ATTORNEY WENTZEL: See, Your  
11 Honor, this is being offered to show that  
12 there was a threat of lock-out. This the  
13 only thing they have. And now they say,  
14 oh, did they tell you that they were gonna  
15 rescind their threat to lock-out? It's a  
16 bootstrap. He's already said the only  
17 statement by GBCOA is in its letter which  
18 says just, we'll take further action,  
19 referring to an action for money  
20 judgement. Now they are using Attorney  
21 Hodge's statement to prove that a threat  
22 of lock-out was made.

23           ATTORNEY TANKENSON HODGE:  
24 That's really not correct, Your Honor,  
25 respectfully.

1                   ATTORNEY WENTZEL: Okay, well  
2                   if it's stipulated that Plaintiff's  
3                   Exhibit H is not offered and cannot be  
4                   considered to prove there was a threat of  
5                   lock-out, then I have no problem with the  
6                   question.

7                   ATTORNEY TANKENSON HODGE: It  
8                   is not offered to prove there was a threat  
9                   of lock-out, it is offered to prove that  
10                  Neighborhood Association communicated to  
11                  Great Bay their understanding that that  
12                  was the thrust of what was being said to  
13                  them, and that there was no clarification  
14                  to suggest that was untrue, and that is  
15                  offered directly in response to Attorney  
16                  Wentzel's --

17                  ATTORNEY WILCZYNSKI: No.

18                  ATTORNEY TANKENSON HODGE: --  
19                  line of questions with the same witness in  
20                  which he said, couldn't you just have send  
21                  an e-mail to the GBCOA board and asked  
22                  them if they were gonna lock you out.  
23                  This is intended to respond to that line  
24                  of questions.

25                  THE COURT: Okay. Let me

1 hear from Attorney Wilczynski, you were  
2 saying something?

3 ATTORNEY WILCZYNSKI: I'm  
4 sorry, Your Honor, the word lock-out does  
5 not appear in that letter. It is a  
6 request for a rescission of the  
7 assessments. There's nothing about  
8 lock-out in there. And that's exactly  
9 what Attorney Hodge is attempting to do is  
10 to use it to -- for the truth of the  
11 matter asserted that somehow there was a  
12 communication about lock-outs, and as a  
13 result of this specific communication by  
14 Attorney Hodge to Great Bay that we showed  
15 that we would be locking them out.  
16 There's nothing about lock-out in there.

17 ATTORNEY TANKENSON HODGE: So  
18 -- but, Your Honor, the wording, the exact  
19 wording in my --

20 THE COURT: No, no. I'm  
21 sorry, Attorney Hodge, let me see the  
22 paragraph one more time, please.

23 ATTORNEY TANKENSON HODGE:  
24 Thank you, judge. I think this --

25 THE COURT: It's at the



1 second page of this.

2 ATTORNEY TANKENSON HODGE:  
3 It's right here. It's, *coupled with your*  
4 *threat to exclude them from use and*  
5 *occupancy, if they fail to comply.*

6 THE COURT: But isn't it the  
7 same thing to exclude from use and  
8 occupancy of their suites, isn't that the  
9 same thing as the lock-out?

10 ATTORNEY WILCZYNSKI: Your  
11 Honor, they did not ask for clarification  
12 on the issue of lock-out. They simply  
13 said that, you threaten to lock-out and we  
14 want you to rescind the invoice. That's a  
15 different scenario. Again, she's already  
16 agreed it's not for the purpose of the  
17 truth of the matter asserted, it is simply  
18 to show that somehow we did not respond to  
19 a question of, are you really going to  
20 lock us out? That's not what it's doing.  
21 Their proposed course of action is a  
22 rescission of the assessments not a  
23 statement that it relates to a lock-out.  
24 That's all I'm saying, Your Honor, that  
25 the document speaks for itself on that

1 issue. This gentleman's commentary on it  
2 is irrelevant.

3 ATTORNEY TANKENSON HODGE: So  
4 just finally if I may, Your Honor. It is  
5 exactly the same as a lock-out, but I do  
6 think this whole issue goes to argument  
7 and not to the admissibility or propriety  
8 of this question. I think we should be  
9 allowed to have the witness respond to the  
10 point that Attorney Wentzel was making  
11 about the fact that he could have just  
12 e-mailed to ask about whether they meant  
13 to impose a lock-out. It's legitimate  
14 response to that.

15 The argument of counsel about  
16 the idea that that's a misinterpretation,  
17 it's just that, it's just argument. We  
18 will obviously have an opportunity to  
19 argue to Your Honor at the close of the  
20 evidence, but I don't think it goes to the  
21 propriety of the question.

22 ATTORNEY WENTZEL: Your  
23 Honor, the difference is, my questions  
24 were about what this witness did.

25 THE COURT: Have done.

1                   ATTORNEY WENTZEL: What he  
2                   said --

3                   THE COURT: No, what he could  
4                   have done, which is like you stated, send  
5                   and e-mail or even make a phone call with  
6                   respect to what are the consequences.

7                   ATTORNEY WENTZEL: So his  
8                   testimony about Attorney Hodge's statement  
9                   in her letter does not address the  
10                  question of what did he do to find out if  
11                  there was a threat of lock-out.

12                  THE COURT: Right. I agree.  
13                  I agree with you, Attorney Wentzel.

14                  So, Attorney Hodge.

15                  ATTORNEY TANKENSON HODGE: So  
16                  I'm not sure -- I mean, obviously the  
17                  letter is already in evidence.

18                  THE COURT: Yes, but he  
19                  cannot testify to what you have stated  
20                  here in this letter, it's two separate  
21                  issues.

22                  ATTORNEY TANKENSON HODGE:  
23                  Very well, Your Honor. So, Your Honor, I  
24                  also have some questions about some of the  
25                  amendments to the Declaration, but I'm

1 inclined to think that these also are  
2 matters may lend themselves more to  
3 argument than to the testimony of a  
4 witness. I know Mr. Cutrona was asked  
5 about the wording of some amendments to  
6 the Declaration that were offered, but I  
7 think our Exhibit E and our Exhibit F are  
8 both admitted in evidence, and under the  
9 circumstances I would reserve what I would  
10 otherwise ask the witness about for  
11 arguments if the Court will permit?

12 THE COURT: Okay.

13 ATTORNEY TANKENSON HODGE:  
14 Can we confirm though just for my piece of  
15 mind, Your Honor, that Defendant's  
16 Exhibits E and F are in evidence?

17 THE COURT: Okay, I'm  
18 checking.

19 ATTORNEY TANKENSON HODGE:  
20 Thank you.

21 THE COURT: You said E and F,  
22 right?

23 ATTORNEY TANKENSON HODGE:  
24 Yes, judge.

25 THE COURT: Yes, E, F, and G

**Recross - Mr. Cutrona**

1 are all admitted. Those are defense  
2 exhibits. Yes. And they were admitted by  
3 stipulation. There was a stipulation by  
4 Attorney Wentzel.

5 ATTORNEY TANKENSON HODGE:  
6 Very well. I'm gonna reserve my points on  
7 that for argument then. I don't have  
8 anything further.

9 THE COURT: Okay. All right.  
10 So we're through with Mr. Cutrona, his  
11 testimony?

12 ATTORNEY WENTZEL: No, there  
13 was one -- I did have one --

14 THE COURT: Oh, sure. You  
15 may proceed, Attorney Wentzel.

16 **RECROSS EXAMINATION**

17 **BY ATTORNEY WENTZEL:**

18 Q. Okay. I just have one area I  
19 want to ask you about, Mr. Cutrona.  
20 You're talking about -- when I crossed you  
21 you admitted that the suite owners paid  
22 CU-1 expenses from 2006 to 2016, and then  
23 Attorney Hodge asked you, well, what about  
24 2017 to 2021, and you said, well, we  
25 didn't own the unit anymore and we didn't

Recross - Mr. Cutrona

1 assess our members. Do you recall that  
2 generally?

3 **A.** Yes. And I think Attorney  
4 Hodge corrected me that she meant that I  
5 took it from the date the deed was  
6 transferred, but she corrected me she was  
7 talking from 11-3-2016 to the date the  
8 deed was transferred.

9 **Q.** I think we need a little more  
10 clarity as to what the CU-1 assessments  
11 are comprised of. Okay? Let's talk about  
12 the period from 2006 to 2016 when the  
13 suite owners paid the CU-1 assessments  
14 pursuant to invoices that you The  
15 Neighborhood Association issued. Okay?  
16 What comprised the CU-1 assessments that  
17 the suite owners paid?

18 **A.** Counselor, if you would go to  
19 Exhibit C the defendant's exhibit which is  
20 the October 1st -- attached to the October  
21 1st memo of Marsha Leighton-Hermann, you  
22 will see a description of the operating  
23 expenses laid out for the Commercial Unit  
24 and I could itemize and give you all the  
25 items to help you answer the question but

**Recross - Mr. Cutrona**

1 you would have the complete listing right  
2 there.

3 **Q.** Okay.

4 **A.** If you want me to read them I  
5 would be glad to do that.

6 **Q.** No, my question is simpler  
7 than that.

8 **A.** Okay.

9 **Q.** CU-1 as a member of the  
10 condominium owes a portion of the general  
11 common expenses that all unit owners at  
12 GBCOA have to pay; right?

13 **A.** I'm scanning the list of the  
14 expense items, and I do not see common  
15 charges assigned to the Commercial Unit.  
16 We have accounting administration,  
17 housekeeping, human resources, insurance,  
18 loss prevention security, management fee,  
19 repair and maintenance, cable,  
20 electricity, gas, high-speed internet,  
21 refuge, sewer and water. I do not see  
22 common expense allocation.

23 **Q.** I agree with you that they are  
24 not in there for the current club year,  
25 Mr. Cutrona. I'm asking you as the

**Recross - Mr. Cutrona**

1 president of NA, whether or not from 2006  
2 to 2016 CU-1 paid a share of the common  
3 expenses of the entire condominium?

4 **A.** CU-1 paid the expenses of the  
5 entire condominium, you're talking Great  
6 Bay?

7 **Q.** All right. Every -- let's  
8 backup one step. The dues that every unit  
9 owner pays is based on their proportionate  
10 ownership allocation interest; right?

11 **A.** Yes.

12 **Q.** And the dues that they pay are  
13 for common expenses? Everybody has to pay  
14 the proportion of the common expenses that  
15 relates to their percentage allocation  
16 ownership; right?

17 **A.** That's correct.

18 **Q.** And CU-1 has a percentage  
19 allocation ownership; correct?

20 **A.** That's correct.

21 **Q.** All right. And, in fact, it's  
22 listed in Plaintiff's Exhibit 3, which is  
23 the Fifth Amendment that's submitted CU-1?  
24 Let's take a look at that.

25 **ATTORNEY WILCZYNSKI:** What



1 exhibit are you talking about?

2 ATTORNEY WENTZEL:

3 Plaintiff's Exhibit 3.

4 **(Plaintiff's Exhibit 3 shared.)**

5 ATTORNEY WILCZYNSKI: You  
6 have it.

7 ATTORNEY WENTZEL: Go to the  
8 second page, please, paragraph four. All  
9 right.

10 **BY ATTORNEY WENTZEL:**

11 Q. And as you already testified,  
12 Mr. Cutrona, Plaintiff's Exhibit 3, the  
13 Fifth Amendment is the amendment that  
14 submitted CU-1 to the condominium; right?

15 A. Yes.

16 Q. Along with the 12 condo units  
17 in Building G the Gardenia building;  
18 right?

19 A. Yes.

20 Q. All right. And paragraph four  
21 says that, "Exhibit 'B', Percentage  
22 Ownership Allocation, of the Declaration  
23 is hereby replaced by the attached Exhibit  
24 'C'." You see that?

25 A. Yes.

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1           **Q.** And you understand that every  
2 time the developer submitted more units to  
3 the condominium, every unit's percentage  
4 ownership interest changed; right?

5           **A.** Yes.

6           **Q.** And so if we look at Exhibit C  
7 to this one.

8                         Page to the next page of Exhibit  
9 C.

10                        Are you able to see that, Mr.  
11 Cutrona?

12           **A.** Yes.

13           **Q.** All right. And for the record  
14 it has the numerals 203 in the upper  
15 right-hand corner; correct?

16           **A.** Yes.

17           **Q.** And what this exhibit is doing  
18 is it's listing all the units that are in  
19 Building G, and the percentage interest.  
20 Do you see the second column from the  
21 right?

22           **A.** Yes.

23           **Q.** Okay. And if we go to the  
24 next page after -- toward the bottom, the  
25 last one is CU-1 the Commercial Unit. You

1 see that?

2 **A.** Yes.

3 **Q.** And it shows a percentage  
4 ownership interest for CU-1; right?

5 **A.** Yes.

6 **Q.** And so, every member pays a  
7 share of the common expenses in proportion  
8 to their percentage ownership; right?

9 **A.** Yes.

10 **Q.** And CU-1 has a percentage  
11 ownership and pays its share of the common  
12 expenses?

13 **A.** Yes.

14 **Q.** Correct? Plus in addition to  
15 the food and beverage services that CU-1  
16 supplies to the suite owners; right?

17 **A.** Yes.

18 **Q.** So the CU-1 assessments that  
19 NA made against the suite owners from 2006  
20 to 2007, included the food and beverage  
21 services they got, and CU-1's share of the  
22 common expenses based on its percentage  
23 ownership; right?

24 **A.** Yes.

25 **Q.** All right. And after NA

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1 signed and sent the deed over to GBCOA in  
2 2017, it stopped providing food and  
3 beverage services; correct?

4 **A.** Correct.

5 **Q.** But CU-1 still had a  
6 percentage ownership interest and pursuant  
7 to that owed a share of the common  
8 expenses; right?

9 **A.** Once the deed was transferred,  
10 no, but prior to that, yes.

11 **Q.** Well, it's your contention to  
12 be clear, Mr. Cutrona, that once you  
13 transferred the deed GBCOA and its members  
14 at-large were required to pay the CU-1  
15 share of the common expenses; right?

16 **A.** Yes.

17 **Q.** It's still owed the common  
18 expenses, you don't dispute that. You're  
19 saying that after you transferred it those  
20 should have been paid by GBCOA's members?

21 **A.** Yes.

22 ATTORNEY TANKENSON HODGE:  
23 Excuse me, I would like to object to the  
24 form of the question. I think it is not  
25 correct to say that NA says that it should

1 be paid by GBCOA members, it says it  
2 should be paid by GBCOA as the owner,  
3 which may in turn assess its members.

4 ATTORNEY WENTZEL: He  
5 answered the question.

6 ATTORNEY TANKENSON HODGE:  
7 Well, I objected to the form and I want my  
8 objection --

9 THE COURT: Okay. Yes.  
10 Sustained. But --

11 **BY ATTORNEY WENTZEL:**

12 Q. Okay. But, Mr. Cutrona,  
13 you've already said that from 2006 to 2016  
14 NA owned CU-1; right?

15 A. Yes.

16 Q. But the suite owners paid the  
17 CU-1 expenses; right?

18 ATTORNEY TANKENSON HODGE: I  
19 object to the form. I object to the form  
20 of that question. It completely distorts  
21 the testimony.

22 THE COURT: Well, he can  
23 answer. Overrule.

24 THE WITNESS: NA paid the  
25 CU-1 assessment for those years.

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1           **Q.** But NA was a conduit, it  
2 collected the expenses of CU-1 from the  
3 suite owners, isn't that true?

4           **A.** We also collected revenue from  
5 the patrons of the restaurant.

6           **Q.** Right. That's all I'm saying.  
7 The NA collected from the suite owners the  
8 cost and expenses of CU-1 during the time  
9 NA owned it?

10          **A.** That's correct.

11          **Q.** All right. And that included  
12 food and beverage services; right?

13          **A.** Yes.

14          **Q.** And it included insurance,  
15 'cause you had to have insurance for CU-1;  
16 right?

17          **A.** Yeah, I gave you those  
18 expenses earlier, counsel.

19          **Q.** All right. And it also  
20 included CU-1's share of the common  
21 expenses based on its percentage owners?

22          **A.** Yes, the point I made earlier  
23 to you was, I couldn't tell you what the  
24 amount of the CU-1 assessment was because  
25 it's in those generic categories, for

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1 example, housekeeping would be an  
2 allocation that would be allocated by the  
3 percentage you've explained earlier.

4 Q. Okay, I'm not sure what -- why  
5 that's important, Mr. Cutrona, could you  
6 -- what is that --

7 A. Counselor, I was just trying  
8 to explain my answer. I thought you  
9 wanted the total amount of the CU-1  
10 assessment that was billed as an allocated  
11 common expense.

12 Q. No, no. Here's what I'm  
13 getting at Mr. Cutrona, it sounded like  
14 what you said on redirect after you  
15 transferred the CU-1 deed to GBCOA, CU-1  
16 had no more expenses 'cause it didn't  
17 operate any food and beverage services?

18 ATTORNEY TANKENSON HODGE: I  
19 object to the form of that question. I  
20 don't think the witness --

21 Q. That's not what you were  
22 saying; correct?

23 THE COURT: Wait, hold on.  
24 You object to the former question or what  
25 he just asked?

1                   ATTORNEY TANKENSON HODGE:  
2           Yeah, I object to the form of the question  
3           on the grounds that it totally  
4           mischaracterizes what the witness said.

5                   THE COURT: Okay. Rephrase  
6           the question, Attorney Wentzel.

7           **BY ATTORNEY WENTZEL:**

8                   **Q.** After CU-1 transferred the  
9           deed to GBCOA --

10                   ATTORNEY TANKENSON HODGE:  
11           Not CU-1 transferred the deed.

12                   **Q.** After NA transferred the CU-1  
13           deed to GBCOA, CU-1 did not provide food  
14           and beverage services to the suite owners  
15           any longer; correct?

16                   **A.** Correct.

17                   **Q.** All right. But that's only  
18           one part of the expenses that the suite  
19           owners paid relating to CU-1. Another  
20           part of the expenses they paid prior to  
21           the transfer was CU-1's share of the  
22           common expenses of the condominium  
23           at-large; correct?

24                   **A.** Yes.

25                   **Q.** And the assessments that are



1 at issue in this case are not for food and  
2 beverage services from 2017 to 2021, it's  
3 for CU-1's share of the common expenses;  
4 correct?

5 **A.** Yes.

6 **Q.** All right.

7 That's all I have, judge.

8 THE COURT: Okay. All right.

9 Okay, thank you, Mr. Cutrona.

10 THE WITNESS: You're welcome,  
11 Your Honor.

12 THE COURT: Thank you.

13 Do you have any other witnesses,  
14 Attorney Hodge?

15 ATTORNEY TANKENSON HODGE:  
16 No, Your Honor, that would be the end of  
17 my direct presentation.

18 THE COURT: Okay. All right.  
19 Okay. Thank you.

20 So, Attorney Wentzel, your  
21 witness --

22 ATTORNEY WENTZEL: Your  
23 Honor --

24 THE COURT: -- is it Mr.  
25 Doyle or Miss Chung who is available on

1 December 13th?

2 ATTORNEY WENTZEL: Well, Miss  
3 Chung is available on the 13th, correct,  
4 that's pursuant to the Court's order. But  
5 before I bring Mr. Doyle up for  
6 questioning, I want to request that the  
7 Court deny the motion for preliminary  
8 injunction, because it's NA's burden to  
9 establish that there is a threat of --

10 THE COURT: Before you start.  
11 Before you start. It's 3:17, I'm not  
12 going to take testimony today from Mr.  
13 Doyle if we get to that point. So let us  
14 first decide the schedule, because I'm  
15 going to end after the arguments now. I'm  
16 going to end. And so let us decide the  
17 next set of dates so we can continue with  
18 Mr. Doyle and Miss Chung. And would that  
19 be it for you, Attorney Wentzel, if we get  
20 to that point?

21 ATTORNEY WENTZEL: Yes, Your  
22 Honor.

23 THE COURT: I'm sorry, you  
24 said that Miss Chung is available December  
25 13th between what time?

1                   ATTORNEY WENTZEL: I believe  
2                   it's 2:00 and 4:00, Your Honor.

3                   THE COURT: Okay. Yes,  
4                   that's what I have.

5                   ATTORNEY TANKENSON HODGE:  
6                   So, Your Honor, if I may, the Court had  
7                   originally said we would start at 1:00PM,  
8                   which has worked for us. In the morning  
9                   of the 13th I have a conference with a  
10                  judge in St. Croix starting at 9:00, I  
11                  don't know that it will go for very long,  
12                  but I had it calendared with the  
13                  understanding we would start with you in  
14                  the afternoon. So if one o'clock is still  
15                  convenient to the Court and the parties  
16                  that would be my preference.

17                  THE COURT: Yeah, that's  
18                  still fine. I also had December 9th at  
19                  twelve o'clock; right?

20                  ATTORNEY TANKENSON HODGE:  
21                  No, that was the time we had moved up to  
22                  today, Your Honor, we had originally  
23                  thought we would resume tomorrow at 12:00  
24                  --

25                  THE COURT: Okay. Yes. All

1 right. So if anything then we'll just  
2 start on December 13th at one o'clock.

3 ATTORNEY WENTZEL: All right.  
4 So we're not having proceedings tomorrow?

5 THE COURT: Well, it would be  
6 truncated in the sense that it would just  
7 been Mr. Doyle.

8 ATTORNEY WENTZEL: Okay,  
9 well, then we'll definitely -- if we  
10 convene tomorrow we definitely will finish  
11 with Mr. Doyle. And so on the 13th the  
12 only thing would be Miss Chung who is  
13 gonna testify starting at two o'clock so I  
14 don't think we need to convene at 1:00.

15 ATTORNEY TANKENSON HODGE: So  
16 I don't know how long Mr. Doyle's  
17 testimony would be, Your Honor, but if we  
18 could complete -- if he is the only  
19 additional witness until we get to Miss  
20 Chung, you know, it would certainly be  
21 worth thinking about finishing the  
22 testimony today and then having argument  
23 at the end of the testimony. Because I  
24 think if we're gonna -- we're certainly  
25 contemplating the possibility of arguing

1 this twice.

2 THE COURT: No, I can't  
3 continue on today. I'll hear the  
4 arguments at this point with respect to  
5 whether the plaintiff thinks that you've  
6 met the burden thus far, and if not, then  
7 we'll just continue on with the  
8 plaintiff's testimony. But you are saying  
9 that if he were to -- you're saying that  
10 you are suggesting that both Miss Doyle  
11 and Mr. Chung -- I'm sorry. You're  
12 suggesting that Mr. Doyle continues on and  
13 then we get to Miss Chung on December  
14 13th?

15 ATTORNEY WENTZEL: Your  
16 Honor, we're willing to do whatever is  
17 convenient for the Court. I think that we  
18 could get Mr. Doyle and Miss Chung done on  
19 the 13th. If Your Honor wants us to come  
20 tomorrow and do Mr. Doyle we're happy to  
21 do that too.

22 THE COURT: Okay.

23 ATTORNEY WENTZEL: But  
24 tomorrow it will only be Mr. Doyle and  
25 then Miss Chung would be on the 13th. But

1 if Your Honor would rather have tomorrow  
2 for other matters, we could do both those  
3 witnesses on the 13th.

4 THE COURT: Okay. And,  
5 Attorney Hodge, you're saying you don't  
6 know how long Mr. Doyle is going to be in  
7 terms of testimony?

8 ATTORNEY TANKENSON HODGE: I  
9 definitely don't know how long Mr. Doyle  
10 will be, but we also by the way, judge,  
11 should contemplate the possibility of some  
12 rebuttal testimony depending on how the  
13 plaintiff's testimony goes.

14 THE COURT: Okay. What we'll  
15 do is we'll start tomorrow again at twelve  
16 o'clock, or whatever time is convenient --  
17 well, I have matters in the morning.  
18 Yeah, so we'll have to start after 12:00  
19 or any time thereafter with Mr. Doyle if  
20 we're proceeding that way. And then we'll  
21 continue with Miss Chung on December 7th.  
22 We can -- if we needed to continue with  
23 Mr. Doyle we can do so and then be  
24 available for Miss Chung between 2:00 and  
25 4:00PM on December 13th. I'm sorry if I

**Argument - Plaintiff**

1 said the seventh, I meant December 13th.  
2 Okay. All right. So is that clear,  
3 tomorrow at twelve o'clock, but I'll  
4 listen to the arguments at this point.

5 I'll hear from you, Attorney  
6 Wentzel.

**[ARGUMENT - PLAINTIFF]**

7  
8 ATTORNEY WENTZEL: All right,  
9 Your Honor. The law is clear that in  
10 order to get a preliminary injunction the  
11 plaintiff has to demonstrate and has the  
12 burden of proof to show that there is not  
13 only a likelihood of success on the  
14 merits, but a substantial and imminent  
15 threat of irreparable harm. That's in  
16 Rule 65 of the Rules of Civil Procedure.  
17 What they contended in their motion papers  
18 when they were seeking the TRO, is that  
19 the NA members were being threatened with  
20 immediate and imminent lock-out if they  
21 didn't pay the CU-1 assessments. But it's  
22 become clear, and that's the only  
23 irreparable harm.

24 The law is clear that money  
25 damages, money, is not an irreparable

**Argument - Plaintiff**

1       harm, and you cannot get an injunction  
2       against collection of a debt. The only  
3       harm that they alleged was an imminent  
4       threat of being locked out if they did not  
5       pay the CU-1 assessments. But it has now  
6       become clear, having presented all of  
7       their evidence, that NA has not presented  
8       any substantial evidence that there is a  
9       threat or have ever has been a threat of  
10      lock-out of their members if the CU-1 dues  
11      that are the subject of this motion are  
12      not paid.

13                 Miss Leighton-Hermann who wrote  
14      that exhibit, that letter, Exhibit C,  
15      which is primarily if not exclusively what  
16      they relied on to say, there's gonna be a  
17      lock-out. She testified that that was --  
18      that letter was only for the regular dues  
19      that Ritz-Carlton sends out the bills for  
20      and that neither her nor her employer,  
21      anyone at the Ritz-Carlton Company had any  
22      involvement with regard to the CU-1  
23      assessments that are the subject of this  
24      motion for a preliminary injunction. And  
25      she could not say whether or not lock-out



**Argument - Plaintiff**

1 was going to occur. She said that nobody  
2 from GBCOA had requested the  
3 implementation of lock-out procedures.  
4 She had not -- she had no personal  
5 knowledge that any steps had been taken to  
6 implement lock-out with regard to the CU-1  
7 assessments. She said it's done according  
8 to the reservation system. The Management  
9 Company if you don't pay your normal dues  
10 they put into the reservation system the  
11 notation that a member's locked out,  
12 right? But she said she did not have any  
13 knowledge that that had been done or any  
14 steps toward that had been done with  
15 regard to these CU-1 assessments. She  
16 said they weren't involved, they had  
17 absolutely not involvement, she did not  
18 have any knowledge that that had been done  
19 or any steps toward that had been done  
20 with regard to these CU-1 assessments.  
21 She said they weren't involved, they had  
22 absolutely no involvement, and she  
23 referred people who asked about it back to  
24 the GBCOA board of directors.

25 Now, Mr. Cutrona's testimony is

**Argument - Plaintiff**

1 all based on Plaintiff's Exhibit B and  
2 that one sentence, the final sentence of  
3 Plaintiff's Exhibit B which says, "If the  
4 invoice is not paid in full within 30 days  
5 the Member Association will take further  
6 action as provided for in the  
7 Declarations." And he conceded that the  
8 action in the Declarations that  
9 immediately precedes that is the ability  
10 of the GBCOA to pursue an action for money  
11 damages for non-payment of assessments.  
12 And Mr. Cutrona like Miss Leighton-Hermann  
13 has no personal knowledge that any steps  
14 have ever been taken to implement lock-out  
15 procedures for these CU-1 assessments if  
16 they were not paid.

17 THE COURT: But how  
18 unreasonable is it for him to actually  
19 think so given the fact that that's the  
20 practice, and he's been there long enough  
21 to know what the practice is in terms of  
22 failure to pay your general assessments or  
23 even the special assessments? Setting  
24 aside the lounge, how unreasonable is it  
25 for him to think so?

**Argument - Plaintiff**

1                   ATTORNEY WENTZEL: The  
2                   reason, Your Honor, that it doesn't  
3                   pertain is because all of the references  
4                   to lock-out is being the processed are  
5                   with respect to the general dues, annual  
6                   dues, that everybody pays that are handled  
7                   by the Management Company, Ritz-Carlton  
8                   Club. And that's the entity that puts the  
9                   blacklist in the reservation system and  
10                  locks people out. They have to perform  
11                  that. The GBCOA -- there is no testimony  
12                  about -- that lock-out procedures  
13                  historically have ever applied to CU-1  
14                  assessments from the GBCOA, because this  
15                  is the first time it's ever been done. It  
16                  was NA that issued the assessments to its  
17                  members for CU-1 dues prior to 2017.  
18                  That's the only testimony in the record.  
19                  And then after that they said, well, we  
20                  transferred the deed so we're not gonna  
21                  assess our members anymore. And GBCOA  
22                  says, somebody's got to pay these CU-1  
23                  share of the common expenses and issue the  
24                  invoices.

25                                   But there's no history of

**Argument - Plaintiff**

1 lock-out applying to these assessments,  
2 it's the first time it ever happened. And  
3 the reason it's not reasonable to infer  
4 that lockout will occur with these or  
5 there is imminent threat of it, is because  
6 the records claim only the Management  
7 Company can blacklist a member in the  
8 reservation system. That's how lock-outs  
9 are done. That's what Miss  
10 Leighton-Hermann said. Only the  
11 management company can do that.

12 The directors of GBCOA who are  
13 volunteers, private individuals who are  
14 not on site, Mr. Cutrona conceded all  
15 that, they don't have access to the  
16 Management Company Ritz-Carlton Club  
17 reservation system.

18 THE COURT: Not even for  
19 Cobalt the third party?

20 ATTORNEY WENTZEL: Right.  
21 There's no testimony that they have access  
22 to Cobalt system or they can do anything  
23 to actually effectuate a lock-out, and Mr.  
24 Cutrona conceded. They would have to get  
25 the Management Company or Cobalt's

**Argument - Plaintiff**

1 assistance to do that. And Marsha  
2 Leighton-Hermann testified clearly, the  
3 Management Company has had absolutely no  
4 involvement in this, and to her knowledge  
5 has not taken any steps to implement  
6 lock-out for these CU-1 assessments.

7           There is no evidence in the  
8 record that GBCOA asked the Management  
9 Company or Cobalt to lock-out the suite  
10 owners if they didn't pay these  
11 assessments, or that the Management  
12 Company in fact took any such steps. It's  
13 all an assumption by Mr. Cutrona which  
14 basically says, because lock-out is one of  
15 the remedies that's available to them,  
16 it's likely that they're gonna lock us  
17 out. But there is no evidence to support  
18 that inference. The statement that he  
19 relies on, and he admitted, is the only  
20 statement in the motion papers about -- by  
21 GBCOA about what they're gonna do if the  
22 CU-1 assessments aren't paid. One  
23 sentence, that's all there is in the  
24 entire record in terms of a statement by  
25 GBCOA, and all that says is, we'll take

**Argument - Plaintiff**

1 further action as provided in the  
2 Declaration. And the action that  
3 immediately precedes that quoted in the  
4 Declaration is an action for money  
5 damages.

6           There is no facts to support a  
7 reasonable inference that people who don't  
8 pay these CU-1 assessments are gonna be  
9 locked out of their unit. Mr. Cutrona  
10 admitted he's going there in February, two  
11 weeks in February, nobody's told him that  
12 he's gonna get locked out. He's not  
13 received any notice from anybody that he's  
14 gonna get locked out. He's not aware of  
15 any steps taken by the Management Company  
16 or Cobalt to lock anyone out, and GBCOA  
17 can't do it by itself. They don't have  
18 access to it. So it's speculation by Mr.  
19 Cutrona based on a single sentence that  
20 does not refer to lock-out, it refers to  
21 action permitted by the Declaration one of  
22 which is an action for money damages. And  
23 that is not irreparable harm. The reason  
24 it's not irreparable harm is because  
25 people who don't want to pay the CU-1

**Argument - Plaintiff**

1 assessment, they can just say no, right,  
2 and our remedy is to sue them for money  
3 damages, you can't get an injunction  
4 against that.

5           There is no evidence that we  
6 said, we're gonna lock people out.  
7 There's no evidence of any steps taken,  
8 any directions given, anything. There's  
9 only Mr. Cutrona's speculation based on  
10 other provisions of the Declarations  
11 generally about things that the owners --  
12 that the Members Association can do. One  
13 of them's lock-out, of them is an action  
14 for money damages, one of them is to  
15 re-rent somebody's unit whose delinquent,  
16 but there is no evidence in the record as  
17 to GBCOA having any intention or taking  
18 any steps to do lock-out or to do anything  
19 but an action for money damages. And so,  
20 the -- I could talk about the likelihood  
21 of success, but I think that Your Honor  
22 saw that something more like a merits  
23 matter, who owes -- who owes under the  
24 Declarations these assessments? Does it  
25 depend on who has the deed?

**Argument - Defendant**

1           But, the irreparable harm  
2           element, which is essential, has not been  
3           established. And I think the Court has  
4           picked up on that. Their references to  
5           general policies that historically are  
6           applied to general assessments, there is  
7           no evidence that there is lock-out or any  
8           steps toward lock-out threatening for  
9           these CU-1 assessments. They are  
10          disputed, okay? That's all the testimony  
11          is. And that's not irreparable harm.

12                   THE COURT: Okay. All right.  
13          Thank you.

14                   Attorney Hodge.

15                   **[ARGUMENT - DEFENDANT]**

16                   ATTORNEY TANKENSON HODGE:  
17          Yes, Your Honor. I would say, simply,  
18          that the only reason that we do not have  
19          Neighborhood Association members locked  
20          out of their units right now is because  
21          the Court entered the temporary  
22          restraining order. The only reason we do  
23          not have a definitive statement from Great  
24          Bay saying, gotcha, is because we were  
25          able to get this matter in front of the



**Argument - Defendant**

1 Court promptly, and the Court was willing  
2 to look at it promptly and protect the  
3 owners from that consequence.

4 Essentially, the Court stopped  
5 Great Bay before it dropped the hammer.  
6 The concept I understand Attorney Wentzel  
7 is arguing is, because we didn't get  
8 there, because we didn't actually lock  
9 people out, you can't prove we would have  
10 locked them out. But in fact, the  
11 documentation is quite strong that it was  
12 reasonable to understand that the threat  
13 of a lock-out was one of the primary  
14 sanctions that was hanging over the heads  
15 of the Neighborhood Association members.  
16 And intentionally so.

17 When Great Bay sent their memo,  
18 which is Exhibit B, they may have  
19 intentionally been vague about exactly  
20 which one of their many options that  
21 Attorney Wentzel referred to they were  
22 going to choose to inflict to punish  
23 anyone who didn't pay. But we do know  
24 that they said in that four-page memo,  
25 they didn't just send the invoice saying

**Argument - Defendant**

1       you owe this money, they sent a four-page  
2       memo saying, the enclosed invoice for  
3       delinquent assessments relating to CU-1 is  
4       due immediately. And they footnoted a  
5       place where the NA members could look and  
6       see for themselves all the many horrors  
7       that were in the declaration that could be  
8       applied to a person who received a invoice  
9       for a delinquent assessment and didn't pay  
10      it.

11                   And this suggestion that Mr.  
12      Cutrona reading the very materials that  
13      Great Bay referred them to in its footnote  
14      was somehow an invitation to him to just,  
15      you know, kind of dream about this is not  
16      correct. They didn't have to say we were  
17      gonna impose the sanctions under the  
18      Declaration. They didn't say, we may  
19      impose further action under the  
20      Declaration, they say, we will take  
21      further action under the Declaration, and  
22      here's where you can find the documents  
23      with all the specifics on that. And I  
24      would like to say that, even though it is  
25      not disputed that Attorney -- I mean, that

**Argument - Defendant**

1 Miss Leighton-Hermann did not have  
2 instructions on dropping the big  
3 punishments in connection with the Great  
4 Bay assessments for CU-1, her memo and the  
5 language of her memo she said is, applies  
6 to annual assessments before this memo of  
7 October 1st and to assessments afterwards.  
8 And this bill, the invoice that's in  
9 evidence as Defendant's Exhibit A, which  
10 happen to be the one sent to Mr. Cutrona,  
11 specifically shows that it's an invoice  
12 for the maintenance fee for CU-1 for  
13 five-year period. That's exactly what it  
14 was for. And the maintenance fee if not  
15 paid by the date stated, November 22nd,  
16 2021 according to Exhibit A, would  
17 obviously become delinquent. That's  
18 exactly what the memo says.

19 And Miss Leighton-Hermann's memo  
20 Exhibit C says, and I'm quoting now, *usage*  
21 *lockout at all locations until all*  
22 *delinquent balances are paid will occur*  
23 *ten days after the due date mentioned.*  
24 And her memo also said, and these were  
25 communications that were sent to every NA

**Argument - Defendant**

1 member, Exhibit C from Miss  
2 Leighton-Hermann. She -- it specifically  
3 said, and I'm quoting again now, that the  
4 *Affiliation Agreement prohibits access of*  
5 *a member to the club with unpaid annual*  
6 *members dues. Members who, I'm still*  
7 *quoting now, members who have unpaid*  
8 *annual assessments, late fees, or*  
9 *interests owing to the association shall*  
10 *be locked out from all Ritz-Carlton*  
11 *destination clubs including their home*  
12 *club in St. Thomas. Period. Quote,*  
13 *lock-out includes no access to reserved*  
14 *allocation or space available reservations*  
15 *at, underlined, any destination club.*

16 So, while Miss Leighton-Hermann  
17 had not yet gotten instructions that the  
18 blackout was being imposed -- that the  
19 lock-out was being imposed, the reason is  
20 the November 22nd deadline hadn't arrived  
21 when the Court entered its restraining  
22 order, so the lock-out penalty wasn't ripe  
23 yet, it was stopped just in the nick of  
24 time.

25 So, you know, counsel wants to

**Argument - Defendant**

1 say that it's speculation, but the truth  
2 is, if there is any uncertainty here about  
3 the imposition of these plainly  
4 irreparable harms is created by the fact  
5 that Great Bay was not forced to carry out  
6 its threats because it was stopped by a  
7 perfectly proper restraining order. The  
8 threatened action doesn't have to have  
9 actually happened to be a threat of  
10 irreparable harm, that's the whole concept  
11 of a temporary restraining order, it's to  
12 prevent irreparable harm from happening.

13 So I would submit to the Court  
14 that the documents in evidence are ample  
15 to establish the reasonable justification  
16 for Neighborhood Association members and  
17 Neighborhood Association as an  
18 organization to take the communications  
19 they received from Great Bay and its  
20 management company together, and the links  
21 to the declarations as a warning that they  
22 would be threatened with being locked out  
23 of their own residences if they didn't pay  
24 on time. And indeed a number of people we  
25 know under that threat did pay, but then

**Argument - Defendant**

1 asked for refunds when they understood  
2 that the Court had entered a restraining  
3 order, because it was certainly not  
4 something they were doing voluntarily.

5 I just respectfully take  
6 objection to the term speculation. I  
7 think this is a reasonable fear on the  
8 part of the Neighborhood Association and  
9 its members about what will happen to them  
10 if they were not protected by the  
11 restraining order. And we would ask the  
12 Court very sincerely to maintain the  
13 position taken, let Great Bay put on its  
14 defense to the extent it has one. And  
15 having heard all the evidence decide then  
16 whether to enter a preliminary injunction.  
17 We think that will be ample evidence to  
18 support doing that. We certainly think  
19 there is ample reason to fear irreparable  
20 harm or this injunction rescinded.

21 THE COURT: So, Attorney  
22 Hodge, let me ask this question, had the  
23 -- let us say a lock-out did occur, just  
24 for example, had it got to the point where  
25 a lock-out occurred or would have

**Argument - Defendant**

1 occurred, or even if they specifically  
2 stated that a lock-out would occur, what  
3 exactly would be the irreparable harm if  
4 it's not just -- besides money damages?  
5 What is the harm? What would have been  
6 the harm besides money?

7 ATTORNEY TANKENSON HODGE:

8 Understood, Your Honor. So the huge  
9 distinction in the eyes of the law in the  
10 world of restraining orders and  
11 injunctions, is something that can be  
12 fully compensated in money and something  
13 that can't be fully compensated in money.  
14 And there's a massive amount of case law  
15 that says, real property, an interest in  
16 real property is by definition something  
17 that is irreplaceable. So if you deprive  
18 someone of the use of their property that  
19 is a classic case of irreparable harm.  
20 Even if not permanently, even a temporary  
21 deprivation of a person's right to use and  
22 occupy their property by definition in  
23 ample caselaw is irreparable harm. And I  
24 don't even understand Mr. Wentzel to deny  
25 that. His argument is not that, if we

**Argument - Defendant**

1 were going to lock them out that wouldn't  
2 have been irreparable harm, his argument  
3 is, okay, being locked out would be  
4 irreparable harm but you can't prove we  
5 would have done it. So that's our  
6 position.

7 THE COURT: Okay. So I will  
8 reserve ruling on this issue until after  
9 we take testimony from the plaintiffs  
10 starting tomorrow at twelve o'clock.  
11 Okay?

12 ATTORNEY TANKENSON HODGE: So  
13 tomorrow would just be Mr. Doyle, is that  
14 correct?

15 THE COURT: We will start  
16 with Mr. Doyle. Because I don't want to  
17 find myself in a situation where we start  
18 at one o'clock next week Monday and it  
19 takes more than four or five hours to get  
20 through the entire testimony.  
21 Particularly since the Court is actually  
22 on recess on December 13th. So the more  
23 we can accomplish tomorrow the better off  
24 we all are.

25 ATTORNEY TANKENSON HODGE:



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Very well. Thank you, Your Honor.

THE COURT: All right. So  
thank you all. Thank you, Attorney  
Wentzel, Attorney Wilczynski, Attorney  
Hodge. Thank you, Mr. Cutrona and Mr.  
Doyle. I'll see you tomorrow at 12:00PM.

**(Court was recessed until next day.)**

**CERTIFICATE OF REPORTER**

1  
2 I, KAI M. MULLEY, RPR, an Official Court  
3 Reporter II of the Superior Court of the Virgin  
4 Islands, do hereby certify that I did report  
5 stenographically, in my professional capacity, the  
6 **PRELIMINARY INJUNCTION HEARING** held in the matter of  
7 **GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC. vs. THE**  
8 **NEIGHBORHOOD ASSOCIATION, INC., ST-20218-CV-00768**  
9 taken on **DECEMBER 8, 2021**; that I was requested to and  
10 did reduce to transcript form, the following  
11 proceedings, and that the foregoing **249** pages,  
12 inclusive, comprise a full, true and accurate  
13 transcription of the testimony given, objections of  
14 counsel, rulings of the Court, and all matters to  
15 which same relate.

16 IN WITNESS WHEREOF, I have hereunto affix my  
17 signature this 4TH day of FEBRUARY, 2022.

18  
19  
20  
21  
22 /s/KAI M. MULLEY

23 Kai M. Mulley, RPR  
24 Official Court Reporter II  
25

KAI M. MULLEY, RPR, OFFICIAL COURT REPORTER II

**FILED**

May 27, 2022 04:33 PM  
SCT-Civ-2022-0002  
VERONICA HANDY, ESQUIRE  
CLERK OF THE COURT

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

<u>GREAT BAY CONDOMINIUM OWNERS</u> <u>ASSOCIATION, INC.</u>	)	
	)	CIVIL NO. ST-18-CV-768
	)	
PLAINTIFF,	)	ACTION FOR DECLARATORY
v.	)	JUDGMENT, TO CANCEL DEED
	)	AND TO QUIET TITLE
THE NEIGHBORHOOD ASSOCIATION, INC.	)	
	)	
<u>DEFENDANT.</u>	)	

**NOTICE OF FILING ADDITIONAL EXHIBIT FOR**  
**HEARING ON PRELIMINARY INJUNCTION**

Plaintiff, Great Bay Condominium Association, Inc., by and through its undersigned counsel, hereby gives notice of the filing of **PLAINTIFF'S EXHIBIT 23** for consideration at the December 9<sup>th</sup> and/or December 13, 2021 hearing on Defendant's Motion for Temporary Restraining Order and Preliminary Injunction, a copy of which is attached. The attached new exhibit is intended for use or in response to the Defendant's Exhibit "U" added by Defendant immediately prior to this December 9<sup>th</sup> hearing date.

Respectfully Submitted,

**LAW OFFICE OF W. MARK WILCZYNSKI, P.C.**

Dated December 9, 2021

/s/ W. Mark Wilczynski  
**W. MARK WILCZYNSKI, ESQ.**  
P.O. Box 1150  
St. Thomas, VI 00804-1150  
Tel: (340) 774-4547  
Email: [Mark@usvilaw.com](mailto:Mark@usvilaw.com)  
V. I. Bar No.: 515  
**Attorney for Great Bay Condominium  
Owners Association, Inc.**

- AND -

**DAVID F. WENTZEL, ESQ.**  
Wentzel Law Offices  
77 W. Washington St., Suite 2100  
Chicago, IL 60602  
Tel: (312) 697-0500  
Fax: (312) 697-0505  
Email: [dwentzel@wentzellaw.com](mailto:dwentzel@wentzellaw.com)  
**Attorney for Great Bay Condominium  
Owners Association, Inc.**

**A.000979**

*Great Bay Condominium Association, Inc. v. The Neighborhood Association, Inc.*  
Case No. ST-2018-CV-768  
Notice of Filing of Additional Exhibit for Hearing on Preliminary Injunction

**CERTIFICATE OF SERVICE**

I **CERTIFY** that on this the 9th day of December, 2021, I caused a true and exact copy of the foregoing **NOTICE OF FILING OF ADDITIONAL EXHIBIT FOR HEARING ON PRELIMINARY INJUNCTION** to be filed using the Court's C-Track E-Filing system which will send notice, unless otherwise indicated below, of same:

**MARIA T. HODGE, ESQ.**  
Hodge & Hodge  
1340 Taarneberg  
St. Thomas VI 00802  
Tel: (340) 774-6845  
Fax: (340) 714-1848  
[maria@hodgelawvi.com](mailto:maria@hodgelawvi.com)  
***Counsel for Defendant***

By:           /s/ Carolyn C. Duncan

# EXHIBIT **23**

**CONDOMINIUM DEED**

---

THIS INDENTURE is made the 20 day of September, 2017 by and between The Neighborhood Association, Inc., a not for profit corporation organized and existing under the laws of the Virgin Islands of the United States, whose address is 6910 Great Bay, Gardenia Building, 5<sup>th</sup> Floor, St. Thomas, Virgin Islands 00802-2552 (hereinafter "Grantor") and Great Bay Condominium Owners Association, Inc., a not for profit Virgin Islands corporation whose address is 6910 Great Bay, St. Thomas, Virgin Islands 00802 ("Grantee").

WHEREAS, pursuant to the provisions of the Declaration of Condominium of Great Bay Condominiums, recorded on May 31, 2002, in the Office of the Recorder of Deeds in St Thomas, Virgin Islands, as amended by various amendments thereafter, including the Fourth Amendment thereto, dated June 6, 2006, (hereinafter " the Declaration") the Grantor is authorized to convey to Grantee a commercial unit, including the Unit hereinafter described and conveyed, and

WHEREAS, under the provisions of the Declaration the Grantee is obligated to accept such conveyance, and

WHEREAS, the instant conveyance is made free of any service contracts or other obligations except as provided in the Declaration, By Laws and Rules and Regulations of the Grantee,

NOW, THEREFORE, this agreement,

WITNESSETH: That the Grantor does hereby grant to Grantee and Grantee's successors and assigns, the real property described as follows:

The Unit known as CU-1 (hereinafter the "Unit") in the Great Bay Condominium, at the property known as Parcel Nos. 4-2, 4-3, 4-4, 4-5, 4-6, 4-7, 4-8, 5-33A, 4-10, Remainder Parcel No. 4 (Southeastern Portion) Estate Nazareth, No. 1 Red Hook Quarter, St. Thomas, U.S. Virgin Islands and Remainder Parcel No. 4 (Southwestern Portion) Estate Nazareth, No. 2 Red Hook Quarter, St. Thomas, U.S. Virgin Islands, designated and described as such in the Declaration of Condominium for Great Bay Condominium Declaration and the Supplementary Declaration of Condominium for the Club at Great Bay Condominium (collectively, the "Declaration") respectively establishing plans for condominium ownership and interval ownership of said buildings and said property, made by RC Hotels (Virgin Islands), Inc. under the Condominium Act of the Virgin Islands of the United States (Chapter 33, Title 28, Virgin Islands Code), dated May 10, 2002 and recorded in the Office of the Recorder of Deeds for St. Thomas and St. John, U.S. Virgin Islands on May 31, 2002, as Document Nos. 2002002741 and 2002002742, respectively, as subsequently expanded and amended,



Doc # 2018001505  
# Pages 7  
03/06/2018 02:05 PM  
Official Records of  
ST THOMAS / ST JOHN  
ERICA DOVER M.P.A.  
RECORDER OF DEEDS  
Fees \$119.00

**CONDOMINIUM DEED**

THIS INDENTURE is made the 20 day of September, 2017 by and between The Neighborhood Association, Inc., a not for profit corporation organized and existing under the laws of the Virgin Islands of the United States, whose address is 6910 Great Bay, Gardenia Building, 5<sup>th</sup> Floor, St. Thomas, Virgin Islands 00802-2552 (hereinafter "Grantor") and Great Bay Condominium Owners Association, Inc., a not for profit Virgin Islands corporation whose address is 6910 Great Bay, St. Thomas, Virgin Islands 00802 ("Grantee").

WHEREAS, pursuant to the provisions of the Declaration of Condominium of Great Bay Condominiums, recorded on May 31, 2002, in the Office of the Recorder of Deeds in St Thomas, Virgin Islands, as amended by various amendments thereafter, including the Fourth Amendment thereto, dated June 6, 2006, (hereinafter " the Declaration") the Grantor is authorized to convey to Grantee a commercial unit, including the Unit hereinafter described and conveyed, and

WHEREAS, under the provisions of the Declaration the Grantee is obligated to accept such conveyance, and

WHEREAS, the instant conveyance is made free of any service contracts or other obligations except as provided in the Declaration, By Laws and Rules and Regulations of the Grantee,

NOW, THEREFORE, this agreement,

WITNESSETH: That the Grantor does hereby grant to Grantee and Grantee's successors and assigns, the real property described as follows:

The Unit known as CU-1 (hereinafter the "Unit") in the Great Bay Condominium, at the property known as Parcel Nos. 4-2, 4-3, 4-4, 4-5, 4-6, 4-7, 4-8, 5-33A, 4-10, Remainder Parcel No. 4 (Southeastern Portion) Estate Nazareth, No. 1 Red Hook Quarter, St. Thomas, U.S. Virgin Islands and Remainder Parcel No. 4 (Southwestern Portion) Estate Nazareth, No. 2 Red Hook Quarter, St. Thomas, U.S. Virgin Islands, designated and described as such in the Declaration of Condominium for Great Bay Condominium Declaration and the Supplementary Declaration of Condominium for the Club at Great Bay Condominium (collectively, the "Declaration") respectively establishing plans for condominium ownership and interval ownership of said buildings and said property, made by RC Hotels (Virgin Islands), Inc. under the Condominium Act of the Virgin Islands of the United States (Chapter 33, Title 28, Virgin Islands Code), dated May 10, 2002 and recorded in the Office of the Recorder of Deeds for St. Thomas and St. John, U.S. Virgin Islands on May 31, 2002, as Document Nos. 2002002741 and 2002002742, respectively, as subsequently expanded and amended,

Doc # 2018001505



Being the same interest conveyed to Grantor by RC Hotels (Virgin Islands), Inc., a corporation organized and existing under the laws of the United States Virgin Islands by Condominium Deed dated December 20, 2008 and recorded in the Recorder of Deeds Office for the District of St. Thomas and St. John on December 30, 2008 as Document No. 2008012283.

TOGETHER WITH the undivided percentage interest in the common areas and facilities of the Great Bay Condominium (hereinafter the "Common Elements"), as the same may be subsequently amended from time to time, including all easements appurtenant thereto;

TOGETHER ALSO WITH the appurtenances and all the estate of the Grantor in and to the Unit;

TOGETHER ALSO WITH all fixtures and permanent equipment used or useful in connection with the above-described Unit of which the Unit is appurtenant and now or hereafter attached to or installed therein.

The above-described Unit, together with the appurtenances and other interests hereinabove described in connection with the Unit now or hereafter vested or attached to or installed in the Unit to which the Unit is appurtenant, are hereinafter collectively referred to as the "Property".

SUBJECT TO AND WITH THE BENEFIT OF U.S. Virgin Islands zoning laws and regulations, real property taxes for year 2017 and for subsequent years thereafter, covenants, restrictions and easements of record, the provisions of the Declaration and of the Bylaws of Great Bay Condominium Owners Association, Inc., and The Neighborhood Association, Inc., as amended from time to time by instruments recorded in the Office of the Recorder of Deeds for St. Thomas and St. John, U.S. Virgin Islands, which provisions, together with any amendments thereto, shall constitute covenants running with the land and shall bind any person having at any time any interest or estate in the Property, as though such provisions were recited and stipulated at length herein.

TO HAVE AND TO HOLD the Property conveyed hereby unto Grantee, Grantee's successors and assigns, in fee simple absolute forever.

AND THE GRANTOR WARRANTS that the Property is free from encumbrances suffered or created by acts of Grantor, will forever warrant and defend the title to the Property against all persons lawful claiming the same from, through or under Grantor.



# E-Filing Submission Confirmation

The following electronic filing(s) were successfully submitted. Please keep a copy of this confirmation for your records.

**Submitted Date** 12-09-2021 11:49 AM  
**E-File Confirmation #** 15441639064999689

**Filings Submitted:**

<b>Court</b>	<b>Case Number</b>	<b>Filing Type(s)</b>	<b>Documents</b>	<b>Fees</b>
Superior Court of the Virgin Islands	ST-2018-CV-00768	Notice - Notice of Filing	2	\$ 0.00
<u>Total</u>				<u>\$ 0.00</u>

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS and ST. JOHN

\*\*\*\*\*

GREAT BAY CONDOMINIUM OWNERS	)	
ASSOCIATION	)	
	)	Case No. ST-18-CV-768
Plaintiff	)	
	)	
vs.	)	ACTION FOR DAMAGES
	)	
THE NEIGHBORHOOD ASSOCIATION, INC.	)	
	)	
Defendant.	)	
_____	)	

**THE NEIGHBORHOOD ASSOCIATION, INC. NOTICE OF FILING ADDITIONAL  
EXHIBIT FOR HEARING ON PRELIMINARY INJUNCTION**

**COMES NOW**, Defendant, The Neighborhood Association, Inc., by and through undersigned counsel, Hodge & Hodge, by Maria Tankenson Hodge, Esq., and gives notice of the filing of the attached exhibit “U” for consideration at the hearing on December 9, and/or December 13, 2021, on Defendant’s Motion for Temporary Restraining Order and Preliminary Injunction, as requested by the Court. The attached is a new exhibit intended for use in response to the exhibits added by Plaintiff immediately prior to the December 8 hearing date. This exhibit was previously produced in discovery and is familiar to the Plaintiff, so there will be no surprise in this addition to the evidence.

**Respectfully submitted,  
HODGE & HODGE**

Dated: December 9, 2021

By:  /s/ Maria T. Hodge  
Maria Tankenson Hodge, Esq.  
1340 Taarneberg, St. Thomas, V.I. 00802  
Tel.: (340) 774-6845 || fax.: (340) 776-8900  
[maria@hodgelawvi.com](mailto:maria@hodgelawvi.com)  
*Attorney for Defendant, The Neighborhood  
Association, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 0th day of December, 2021, I caused a true and exact copy of the foregoing to be served via the Court's electronic filing system:

W. Mark Wilczynski, Esq.  
Palm Passage, Suite C20-22 || P.O. Box 1150  
St. Thomas, US Virgin Islands, 00801  
*Attorney for Plaintiff, Great Bay Condominium Owners Association*  
[mark@usvilaw.com](mailto:mark@usvilaw.com)

David F. Wentzel, Esq.  
Wentzel Law Offices  
77 W. Washington St. Suite 2100  
Chicago, Ill. 60602  
Email: [dwentzel@wentzellaw.com](mailto:dwentzel@wentzellaw.com)  
Counsel for Plaintiff

/s/ Maria T. Hodge

Doc # 2018001505  
# Pages 7  
03/06/2018 02:05 PM  
Official Records of  
ST THOMAS / ST JOHN  
ERICA DOVER H.P.A.  
RECORDER OF DEEDS  
Fees \$119.00

**CONDOMINIUM DEED**

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WHEREAS, pursuant to the provisions of the Declaration of Condominium of Great Bay Condominiums, recorded on May 31, 2002, in the Office of the Recorder of Deeds in St Thomas, Virgin Islands, as amended by various amendments thereafter, including the Fourth Amendment thereto, dated June 6, 2006, (hereinafter " the Declaration") the Grantor is authorized to convey to Grantee a commercial unit, including the Unit hereinafter described and conveyed, and

WHEREAS, under the provisions of the Declaration the Grantee is obligated to accept such conveyance, and

WHEREAS, the instant conveyance is made free of any service contracts or other obligations except as provided in the Declaration, By Laws and Rules and Regulations of the Grantee,

NOW, THEREFORE, this agreement,

WITNESSETH: That the Grantor does hereby grant to Grantee and Grantee's successors and assigns, the real property described as follows:

The Unit known as CU-1 (hereinafter the "Unit") in the Great Bay Condominium, at the property known as Parcel Nos. 4-2, 4-3, 4-4, 4-5, 4-6, 4-7, 4-8, 5-33A, 4-10, Remainder Parcel No. 4 (Southeastern Portion) Estate Nazareth, No. 1 Red Hook Quarter, St. Thomas, U.S. Virgin Islands and Remainder Parcel No. 4 (Southwestern Portion) Estate Nazareth, No. 2 Red Hook Quarter, St. Thomas, U.S. Virgin Islands, designated and described as such in the Declaration of Condominium for Great Bay Condominium Declaration and the Supplementary Declaration of Condominium for the Club at Great Bay Condominium (collectively, the "Declaration") respectively establishing plans for condominium ownership and interval ownership of said buildings and said property, made by RC Hotels (Virgin Islands), Inc. under the Condominium Act of the Virgin Islands of the United States (Chapter 33, Title 28, Virgin Islands Code), dated May 10, 2002 and recorded in the Office of the Recorder of Deeds for St. Thomas and St. John, U.S. Virgin Islands on May 31, 2002, as Document Nos. 2002002741 and 2002002742, respectively, as subsequently expanded and amended,

Doc # 2018001505

Being the same interest conveyed to Grantor by RC Hotels (Virgin Islands), Inc., a corporation organized and existing under the laws of the United States Virgin Islands by Condominium Deed dated December 20, 2008 and recorded in the Recorder of Deeds Office for the District of St. Thomas and St. John on December 30, 2008 as Document No. 2008012283.

TOGETHER WITH the undivided percentage interest in the common areas and facilities of the Great Bay Condominium (hereinafter the "Common Elements"), as the same may be subsequently amended from time to time, including all easements appurtenant thereto;

TOGETHER ALSO WITH the appurtenances and all the estate of the Grantor in and to the Unit;

TOGETHER ALSO WITH all fixtures and permanent equipment used or useful in connection with the above-described Unit of which the Unit is appurtenant and now or hereafter attached to or installed therein.

The above-described Unit, together with the appurtenances and other interests hereinabove described in connection with the Unit now or hereafter vested or attached to or installed in the Unit to which the Unit is appurtenant, are hereinafter collectively referred to as the "Property".

SUBJECT TO AND WITH THE BENEFIT OF U.S. Virgin Islands zoning laws and regulations, real property taxes for year 2017 and for subsequent years thereafter, covenants, restrictions and easements of record, the provisions of the Declaration and of the Bylaws of Great Bay Condominium Owners Association, Inc., and The Neighborhood Association, Inc., as amended from time to time by instruments recorded in the Office of the Recorder of Deeds for St. Thomas and St. John, U.S. Virgin Islands, which provisions, together with any amendments thereto, shall constitute covenants running with the land and shall bind any person having at any time any interest or estate in the Property, as though such provisions were recited and stipulated at length herein.

TO HAVE AND TO HOLD the Property conveyed hereby unto Grantee, Grantee's successors and assigns, in fee simple absolute forever.

AND THE GRANTOR WARRANTS that the Property is free from encumbrances suffered or created by acts of Grantor, will forever warrant and defend the title to the Property against all persons lawful claiming the same from, through or under Grantor.





**AGREEMENT AND TERMINATION OF RESTAURANT LEASE  
BETWEEN  
THE NEIGHBORHOOD ASSOCIATION, INC. as Landlord  
And  
RESTAURANT GROUP 101, L.L.C., as Tenant**

THIS AGREEMENT is made effective as of the 31st day of August, 2017 (the "Effective Date"), by and between THE NEIGHBORHOOD ASSOCIATION, INC., a Virgin Islands not-for-profit corporation ("Landlord" or "NA") and RESTAURANT GROUP 101, LLC, a U.S. Virgin Islands Limited Liability Company ("Tenant").

**WITNESSETH:**

WHEREAS, Landlord and Tenant entered into that certain Restaurant Lease dated September 6, 2013 (the "Original Lease"), whereby Landlord leased to Tenant and Tenant leased from Landlord certain premises containing approximately 3700 square feet interior space and 850 square feet patio balcony located at The Ritz-Carlton Club, St. Thomas, in St. Thomas, U.S. Virgin Islands, which is scheduled to expire on October 31, 2017; and

WHEREAS, Landlord and Tenant now desire to provide for the early termination of the Lease.

NOW, THEREFORE, in and for consideration of the mutual covenants hereinafter contained, and other valuable consideration exchanged between the parties, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Notwithstanding any provisions of the Lease to the contrary, the term of the Lease shall be deemed expired as of August 31, 2017 ("Termination Date"). Said termination shall be with the same force and effect as if the term of the Lease was, by the terms thereof, fixed to expire on the Termination Date.

Tenant shall remain liable for the full and faithful performance of its obligations and for payment of all amounts which may be due and payable under the Lease through the Termination Date.

Notwithstanding the foregoing, Tenant shall remain obligated to perform the terms of the indemnity undertaking in article 21 of the Original Lease, for a period of two years following termination, as to any claim that may arise for any act or event occurring prior to the date of termination.

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

**LANDLORD**

**THE NEIGHBORHOOD ASSOCIATION,  
INC.**

*Sm Cutrona*  
Name: Salvatore M. Cutrona, Sr  
Title: President

**WITNESS:**

Name: *Ngonyu Cutrona*  
Date: *9/17/17*

**TENANT**

**RESTAURANT**

*T. Hebl*  
Name: Todd Hebl  
Title: President

**WITNESS:**

Name: *T. Hebl*  
Date: *9/22/17*

NA-000262

A.000993



THE UNITED STATES VIRGIN ISLANDS  
OFFICE OF THE LIEUTENANT GOVERNOR  
DIVISION OF CORPORATIONS AND TRADEMARKS

5049 Kongens Gade  
Charlotte Amalie, Virgin Islands 00802  
Phone - 340.776.8515  
Fax - 340.776.4612


1105 King Street  
Christiansted, Virgin Islands 00820  
Phone - 340.773.6449  
Fax - 340.773.0330

November 16, 2017

CERTIFICATION OF GOOD STANDING

This is to certify that the nonprofit corporation known as **GREAT BAY CONDOMINIUM OWNER'S ASSOCIATION, INC.** filed Articles of Incorporation in the Office of the Lieutenant Governor on **MAY 16, 2000** and a Certificate of Incorporation was issued by the Lieutenant Governor on **OCTOBER 22, 2002** authorizing the said corporation to conduct business in the Virgin Islands and the corporation is considered to be in good standing.



  
Denise Johannes  
Director, Division of Corporation  
and Trademarks

DJ/EG

NA-000263

A.000994

**AFFIDAVIT**

MARIA TANKENSON HODGE, after being duly sworn, deposes and says:

1. That she is an adult resident of St Thomas, Virgin Islands, and is the attorney for the grantor under the attached deed, The Neighborhood Association, Inc. ("NA") a Virgin Islands not-for-profit corporation, with a mailing address of 6910 Great Bay, Gardenia Building, 5<sup>th</sup> Floor, St. Thomas, Virgin Islands 00802-2552, and she has knowledge of the matters set forth herein.

2. That the Grantee in the deed, Great Bay Condominium Owners Association, Inc., is a not-for-profit Virgin Islands corporation whose address is 6910 Great Bay, St. Thomas, Virgin Islands 00802 ("Grantee"), which holds a certificate of good standing from the Office of the Lieutenant Governor.

3. That for recording purposes, the value of the property being conveyed herein is \$100,000 based upon the Tax Assessor's 2017 tax records.

4. That because the conveyance made by the deed submitted herewith is made to a not for profit corporation, which holds a certificate of good standing from the Office of the Lieutenant Governor (copy attached), the conveyance is exempt from stamp tax under the provisions of Title 33 VIC §128(a)(7).

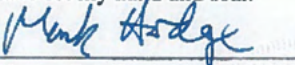
FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
Maria Tankenson Hodge

TERRITORY OF THE VIRGIN ISLANDS )

The foregoing affidavit was acknowledge before me this 5<sup>th</sup> day of March , 2018 by Maria Tankenson Hodge, Esq., being duly sworn upon her oath, as the attorney representing the Grantor in the transaction.

IN WITNESS WHEREOF, I have set my hand and seal.

  
\_\_\_\_\_  
Notary Public  
My Commission Expires:

**NOTARY PUBLIC**  
Name: *Mark Daniel Hodge*  
My Commission Exp: May 19, 2020  
NP Commission #: LNP-03-16  
St. Thomas/St. John, USVI District

NA-000264



**OFFICE OF THE LIEUTENANT GOVERNOR  
OFFICE OF THE TAX COLLECTOR**

5049 Kongens Gade • Charlotte Amalie, Virgin Islands 00802 • 340.776-8505 • Fax 340.779.7825  
1105 King Street • Christiansted, Virgin Islands 00820 • 340.775.6449 • Fax 340.719.2355

**REAL PROPERTY TAX CLEARANCE LETTER**

TO: Office of the Recorder of Deeds  
FROM: Office of the Tax Collector

In accordance with Title 28, Section 121, as amended, this shall certify that there are no outstanding Real Property Tax obligations for the following:

PARCEL NUMBER	1-07803-0437-C1
LEGAL DESCRIPTION	UNIT CU-1 GREAT BAY CONDOS
OWNER'S NAME	THE NEIGHBORHOOD ASSOCIATION INC.

Taxes have been researched up to and including 2017.

CERTIFIED TRUE AND CORRECT BY

Ludence Romney  
Tax Collector

  
SIGNATURE

March 5, 2018

DATE

Doc # 2018001505

NA-000265

A.000996

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

GREAT BAY CONDOMINIUM OWNERS  
ASSOCIATION, INC., )  
 )  
 ) Plaintiff, )  
 )  
 vs. ) Civil No.  
 ) ST-18-CV-768  
 THE NEIGHBORHOOD ASSOCIATION, INC., )  
 )  
 ) Defendant. )  
 )  
 \_\_\_\_\_ )

**T-R-A-N-S-C-R-I-P-T**  
**(Continued - Preliminary Injunction Hearing)**

**December 9, 2021**

BEFORE: HONORABLE RENEE GUMBS CARTY  
Judge Presiding

APPEARANCES: W. MARK WILCZYNSKI, ESQ. &  
DAVID WENTZEL, ESQ.  
Law Office of W. Mark Wilczynski, P.C.  
Palm Passage, Ste. C-20-22  
St. Thomas, VI 00802

(Attorneys for the Plaintiff)

MARIA TANKENSON HODGE, ESQ.  
Hodge & Hodge  
1340 Taarneberg  
St. Thomas, VI 00802

(Attorney for the Defendant)

**I N D E X**

1					
2	<u>WITNESSES</u>				
3		<u>Dir</u>	<u>Crs</u>	<u>Redir</u>	<u>Recrs</u>
4	<u>PLAINTIFF</u>				
5	Thomas Doyle	13	24	50	54
6	<u>EXHIBITS</u>				
7	<u>Plaintiff</u>			<u>Id/Md</u>	<u>Adm</u>
8	Ex. 4			23	26
9		Fourth Amendment to Supplementary Declaration (Club)			
10	Ex. 7			30	33
11		Articles of Incorporation of The Neighborhood Association, Inc.			
12	Ex. 8			37	38
13		Bylaws of the Neighborhood Association, Inc.			
14	Ex. 5			68	69
15		Articles of Incorporation of Great Bay Condominium Association, Inc.			
16	Ex. 6			71	72
17		Bylaws of Great Bay Condominium Association, Inc.			
18	Ex. 24			202	--
19		Condominium Deed, recorded deed from NA, Inc. to Great Bay Condominium Owners Association, Inc.			
20					
21	<u>DEFENDANT</u>				
22	Ex. U			102	105
23		Condominium Deed, recorded deed from NA, Inc. to Great Bay Condominium Owners Association, Inc.			
24					
25					

**I N D E X**

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EXHIBITS

DEFENDANT

		<u>Id/Md</u>	<u>Adm</u>
Ex. B	Memo from Great Bay to NA CU-1 dated 11/3/21	109	--
Ex. N-1	Great Bay letter to Maria Hodge with enclosed unanimous consent	186	102
Ex. P	Demonstrative Exhibit	222	186

\* \* \* \* \*

1 THE CLERK: On the civil jury  
2 calendar, Great Bay Condominium  
3 Association Owners -- sorry. **Great Bay**  
4 **Condominium Owners Association, Inc.**  
5 **versus The Neighborhood Association, Inc.**

6 THE COURT: All right. The  
7 appearances, please. Good afternoon.

8 ATTORNEY WILCZYNSKI: Good  
9 afternoon, Your Honor. Mark Wilczynski on  
10 behalf of plaintiff Great Bay Condominium  
11 Owners Association.

12 ATTORNEY WENTZEL: Morning,  
13 Your Honor. David Wentzel also on behalf  
14 of plaintiff Great Bay Condominium Owners  
15 Association.

16 THE COURT: Right.

17 ATTORNEY TANKENSON HODGE:  
18 Good afternoon, Your Honor. Maria  
19 Tankenson Hodge on behalf of The  
20 Neighborhood Association, Inc.

21 THE COURT: All right. Good  
22 afternoon everyone. I received the  
23 defendant's notice of filing additional  
24 exhibit for the hearing, which is Exhibit  
25 U. Did you receive a copy, Attorney --



1 yes, you did, because I also received the  
2 plaintiff's exhibit which is in response  
3 to defendant's exhibit.

4 ATTORNEY WILCZYNSKI: That's  
5 correct, Your Honor, Exhibit 24.

6 THE COURT: I'm sorry?

7 ATTORNEY WILCZYNSKI: That  
8 would be Exhibit 24. Yes, Your Honor.

9 THE COURT: Okay, I have  
10 Exhibit 23 here. Is it 23 or 24?

11 ATTORNEY WILCZYNSKI: I  
12 thought it was 24, but -- it should be a  
13 copy of the deed.

14 THE COURT: Yes, I have it.  
15 All right. Okay, are we ready to start?

16 ATTORNEY WILCZYNSKI: Yes,  
17 Your Honor.

18 ATTORNEY WENTZEL: Yes, Your  
19 Honor. Yes.

20 THE COURT: Mr. Doyle, please  
21 raise your hand to be sworn.

22 **THOMAS DOYLE,**  
23 after having first been duly sworn as a  
24 witness, testifies as follows:

25 **DIRECT EXAMINATION**

1 **BY ATTORNEY WENTZEL:**

2 **Q.** Mr. Doyle, please introduce  
3 yourself to the Court.

4 **A.** Your Honor, my name is Thomas  
5 Doyle; I live in Estero, Florida and I'm  
6 married to my wife Carol for 49 years. We  
7 visit the Club four or five weeks every  
8 year. I have two daughters, Kathleen and  
9 Christina who both love visiting the Club  
10 and hope to join me this January when  
11 we're down there. I have a BS in  
12 accounting from St. John's University, an  
13 MBA in finance from New York University.

14 By way of professional  
15 background, I've worked in finance for 37  
16 years, eight years at Banker's Trust  
17 Company, 29 years at City Group in various  
18 positions, risk management, lending, ran  
19 an audit division, ran a leverage buyout  
20 group, ran a corporate workout group, was  
21 chief risk officer for our leasing  
22 business, was chief risk officer for the  
23 rental market lending, and was chief  
24 administrative officer for the global  
25 portfolio.

1           **Q.** Mr. Doyle, the court reporter  
2 maybe transcribing your comments, you  
3 might just slow down a little bit.

4           **A.** Oh, okay. Some transactions  
5 that I worked on with Federated Department  
6 Stores, Eastern Airlines, Frederick and  
7 Nelson, Frost Brothers, Metro Luis, Kinder  
8 Care, National Healthcare and Intermatics.

9           THE COURT: Okay. All right.

10 **BY ATTORNEY WENTZEL:**

11           **Q.** Mr. Doyle, you are the  
12 treasurer for the Great Bay Condominium  
13 Owners Association?

14           **A.** Yes. I am currently the  
15 treasurer of the Great Bay Condominium  
16 Association.

17           **Q.** All right. And when did you  
18 first joined the board?

19           **A.** I believe this is my 11th year  
20 on the board of directors with most of  
21 that time serving as treasurer.

22           **Q.** All right. And why did you  
23 decide to join the board of Great Bay  
24 Condominium?

25           **A.** The club was in extremis with

**Direct - Mr. Doyle**

1 millions --

2 THE COURT: I'm sorry, the  
3 club was what?

4 THE WITNESS: In extremis,  
5 that was -- had financial problems, Your  
6 Honor.

7 THE COURT: Okay.

8 THE WITNESS: It had millions  
9 of dollars of bad debt from members not  
10 paying their dues, and a questionable  
11 investment in Lehman Brothers Treasury  
12 Securities before that firm failed. I  
13 join the board 'cause I wanted to try to  
14 help save the Club for my children who  
15 love it there.

16 **BY ATTORNEY WENTZEL:**

17 Q. And describe for the Court  
18 what your responsibilities are as  
19 treasurer for the Association.

20 A. I oversee all the financial  
21 reporting and financial activities. I'm  
22 intimately involved in the capitol  
23 expenditure decisions, proposing and  
24 leading the discussion on the Great Bay  
25 Condominium Owners Association's annual

**Direct - Mr. Doyle**

1 operating budget, and I'm involved in the  
2 financial long-term planning for  
3 refurbishing.

4 In addition, when I first joined  
5 the board I worked with the other members  
6 of the board to solve our delinquency  
7 problem, which ended up with an agreement  
8 with Marriott Vacation Clubs. The job  
9 became more complex as we work to rebuild  
10 the Club after two category storms hit St.  
11 Thomas in 2017. My job was one of the  
12 senior Great Bay officers to interface  
13 with the insurance companies in connection  
14 with that claim. The Club sustained \$21  
15 million dollars worth of physical damage  
16 and we had about \$12 million dollars worth  
17 of business interruption claims as part of  
18 that; we were closed for 13 months.

19 **Q.** All right.

20 **A.** Yes. The GBCOA --

21 THE COURT: Just wait for the  
22 next question, please.

23 THE WITNESS: Yes, sir.

24 Sorry.

25 **Q.** Was there something you wanted

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1 to add to your answer?

2 **A.** Yes. I just wanted to  
3 explain, the GBCOA is the association  
4 responsible for managing all aspects of  
5 the common expenses at the Resort. We  
6 have 1260 interests slash members, which  
7 include the 288 suite owners who are also  
8 members of NA, and the CU-1 which is also  
9 a member. This compares with The  
10 Neighborhood Association whose principal  
11 mission was to manage a dining club.

12 ATTORNEY TANKENSON HODGE:  
13 Your Honor, respectfully I think I need to  
14 interject an objection. I know there is  
15 some peculiarities about conducting these  
16 proceedings by Zoom, but I would like to  
17 note that it appears the witness is  
18 reading a speech. And I would like to ask  
19 that the examination be conducted with  
20 questions and answers that don't involve  
21 reading a speech or reading anything that  
22 he's got in front of himself.

23 THE WITNESS: The only thing  
24 I have in front of me, Your Honor, is an  
25 affidavit for Abbey Chung.

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1 THE COURT: Okay, could you  
2 put it aside, please. Okay, so, Mr.  
3 Doyle, just wait for Attorney Wentzel's  
4 questions, and, of course, the same  
5 courtesy for Attorney Hodge on  
6 cross-examination. All right. So, just  
7 wait for the questions and answer the  
8 questions accordingly.

9 You may proceed.

10 Thank you, Attorney Hodge.

11 **BY ATTORNEY WENTZEL:**

12 **Q.** Thank you, Your Honor.

13 Mr. Doyle, as treasurer were you  
14 personally involved in the decision by  
15 Great Bay to invoice the suites owners for  
16 the CU-1 assessments that are the subject  
17 of NA's motion?

18 **A.** I was involved in the decision  
19 by the GBCOA board to invoice the suite  
20 owners for these CU-1 assessments.

21 **Q.** And how did the question of  
22 the suite owners personal liability for  
23 the CU-1 expenses come up?

24 **A.** I was reviewing the request  
25 for admission in the second lawsuit, which

**Direct - Mr. Doyle**

1 the GBCOA filed in connection with the  
2 seeking money damage and seeking the past  
3 due assessments from NA, which is  
4 different than what I understand this  
5 lawsuit was involved and just the owner --  
6 just to transfer the deed.

7 **Q.** What the request for admission  
8 ask about that you're referring to?

9 **A.** Counsel for NA asked us --  
10 asked the GBCOA to admit that if the -- if  
11 Your Honor in this case decided that the  
12 deed was properly transferred, that the  
13 GBCOA would bill all its members for the  
14 costs of CU-1.

15 **Q.** All right. And what  
16 investigation did you to analyze the  
17 question that was asked by NA's lawyer in  
18 the other case?

19 **A.** I had not -- I hadn't thought  
20 about the question, but what I did is I  
21 went back and reviewed all the documents,  
22 the Declaration, the Amendments to  
23 Declaration, and the corporate documents  
24 for NA to determine what exactly -- what  
25 exactly he was trying to get at. But I



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1 never previously focused on the specific  
2 language of the documents. I found in  
3 multiple places sections where owners of  
4 Two Bedroom suites were responsible for,  
5 and I quote, "all costs and expenses of  
6 CU-1", end quote.

7 **Q.** All right. And based on your  
8 review, did you form a conclusion about  
9 whether it mattered who own CU-1? Did  
10 that have any relevance whether the suite  
11 owners were responsible?

12 **A.** I did form a conclusion, it  
13 was based on reading the documents. It  
14 also was based on the history that the  
15 suite owners had paid the cost and  
16 expenses of CU-1 before NA even had the  
17 deed, 'cause they started paying those  
18 well before the deed was transferred to NA  
19 in 2008.

20 **Q.** Who transferred that deed?

21 **A.** The declarant.

22 **Q.** And who is that?

23 **A.** Ritz-Carlton Development  
24 Company. That's the best I can tell. I  
25 mean, there are so many different names.

Direct - Mr. Doyle

1           **Q.** All right. You're referring  
2 to the Developer --

3           **A.** Yes.

4           **Q.** -- of the Club? All right.  
5 And let me have you look at Plaintiff's  
6 Exhibit 3.

7           THE COURT: Yes. Just one  
8 second. All right.

9           **Q.** Before I do that let me ask  
10 you a couple of follow ups. When did the  
11 Developer transferred the deed for the  
12 Commercial Unit CU-1 to The Neighborhood  
13 Association?

14           **A.** I believe the deed was  
15 transferred on December 30th, 2008.

16           **(Plaintiff's Exhibit 3 shared.)**

17           **Q.** All right. And when did The  
18 Neighborhood Association and the suites  
19 owners in those two buildings, when did  
20 they become part of the condominium  
21 property?

22           **A.** I believe in 2006.

23           **Q.** And from 2006 to 2008 when the  
24 Developer owned CU-1, who paid the CU-1  
25 expenses?

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1           **A.** CU-1 expenses were paid by NA,  
2           which I believe in looking at it, NA  
3           billed its members for their share of the  
4           common expenses which GBCOA incurred on  
5           behalf of the entire condominium.

6           **Q.** Okay. And what -- where did  
7           the CU-1 expenses -- where did NA get  
8           payment for the CU-1 expenses?

9           **A.** NA had a separate second  
10          billing for CU-1 expenses for its members,  
11          which covered the moneys they owed the  
12          GBCOA, moneys they needed to run their  
13          operation --

14                   ATTORNEY TANKENSON HODGE:

15          Respectfully, I need to object, Your  
16          Honor. I don't think we have a foundation  
17          for this witness's testimony about this.  
18          He's testified he was president of Great  
19          Bay from 2010. I think he's talking about  
20          some prior period.

21                   THE COURT: Okay.

22                   ATTORNEY WENTZEL: But he did  
23          testify, Your Honor, that he's in charge  
24          of the finances. And he was asked this by  
25          NA, this question. And as part of his

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1 investigation to respond to NA's request  
2 to admit, he looked into the history of  
3 these payments.

4 THE COURT: He was asked by  
5 the other counsel for NA in the other  
6 matter under -- with respect to the  
7 request for admission, that's what you're  
8 saying, Attorney Wentzel?

9 ATTORNEY WENTZEL: Yes, Your  
10 Honor. And what the request said as Mr.  
11 Doyle said is, if Your Honor rules that  
12 the deed was properly transferred in this  
13 case --

14 THE COURT: Yes.

15 ATTORNEY WENTZEL: -- then in  
16 that case which involves liability for  
17 these CU-1 assessments, that's what's at  
18 issue in the pleadings in that case, that  
19 that mean that all of GBCOA's members  
20 would be responsible for the cost of CU-1.  
21 That was what he was asked to admit, and  
22 that's what he said he investigated.

23 THE COURT: Okay. Overrule,  
24 Attorney Hodge.

25 ATTORNEY TANKENSON HODGE:

Direct - Mr. Doyle

1 Very well, judge.

2 THE COURT: Thanks.

3 **BY ATTORNEY WENTZEL:**

4 Q. All right. Looking at  
5 Plaintiff's Exhibit 3, Mr. Doyle, do you  
6 recognize this is the Fifth Amendment to  
7 the Declaration for the Great Bay  
8 Condominium?

9 A. Yes, I do.

10 Q. Is this one of the parts of  
11 the declarations that you reviewed when  
12 you were analyzing NA's request for  
13 admission?

14 A. Yes, it's one of the  
15 documents.

16 Q. And you see the recorder stamp  
17 at the top of this document showing it was  
18 filed with the Virgin Islands recorder on  
19 July 18, 2006?

20 A. Yes, I do.

21 Q. All right. And, is this  
22 document maintained as part of GBCOA's  
23 official records?

24 A. Yes, it is.

25 Q. Why are the Declarations

Direct - Mr. Doyle

1 maintained as part of GBCOA's official  
2 records?

3 **A.** The Declarations are an  
4 important part of GBCOA's license to  
5 manage the Condominium Association, it  
6 establishes all of the rules on how the  
7 Condominium Association should be  
8 operated, billing, collection and  
9 everything else. It's essential to the  
10 operation of the Condominium.

11 ATTORNEY WENTZEL: All right,  
12 Your Honor, we would move Plaintiff's  
13 Exhibit 3 into evidence. It might have  
14 been admitted already. I don't --

15 THE COURT: It's already  
16 admitted.

17 ATTORNEY WENTZEL: Oh, thank  
18 you, Your Honor. All right.

19 If you look at paragraph five on  
20 page two of Plaintiff's Exhibit 1.

21 Can we page over there?  
22 Paragraph five.

23 ATTORNEY WILCZYNSKI: It's  
24 there.

25 **BY ATTORNEY WENTZEL:**

Direct - Mr. Doyle

1 Q. Can you see that, Mr. Doyle.

2 A. I'm trying to. It's just --  
3 it's gotten a little harder as I've gotten  
4 older. I can see it now.

5 Q. All right. And it says, "All  
6 owners of Residences that are designated  
7 as a Two Bedroom Suite", and we're calling  
8 those the suite owners, right?

9 A. Correct.

10 Q. "Shall, in addition to being  
11 Members to the Condominium Association, be  
12 mandatory members of the Neighborhood  
13 Association whose sole purpose is to own  
14 and operate Commercial Unit CU-1, which  
15 shall be conveyed by Declarant to the  
16 Neighborhood Association and utilized for  
17 the exclusive benefit of the occupants  
18 from time to time of the Two Bedroom  
19 Suites, whether or not such occupants are  
20 Members of the Neighborhood Association,  
21 and as more particularly described in the  
22 organizational and governing documents of  
23 the Neighborhood Association. As a member  
24 of the Neighborhood Association" --

25 ATTORNEY TANKENSON HODGE:

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1 Respectfully, judge, I'm gonna object  
2 again. I don't think we should be having  
3 Attorney Wentzel read this into the  
4 record. Either he's the witness or --

5 ATTORNEY WENTZEL: It's in  
6 evidence, Your Honor.

7 THE COURT: It's already in  
8 evidence. It was admitted the last time.  
9 So it's okay.

10 ATTORNEY TANKENSON HODGE: I  
11 realize that. But I nevertheless think  
12 it's quite unusual to have the lawyer  
13 reading it. Either it's part of the  
14 question to the witness or it's testimony,  
15 I'm not sure which.

16 ATTORNEY WENTZEL: If Your  
17 Honor prefers Mr. Doyle read it, that's  
18 fine.

19 THE COURT: Do you have a  
20 question -- do you have a question at this  
21 point, Attorney Wentzel, with respect to  
22 paragraph five?

23 ATTORNEY WENTZEL: Yes. But,  
24 Your Honor, the document being in evidence  
25 I want the Court to hear what it says, so



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1 that when Mr. Doyle explains its  
2 significance for his analysis of NA's  
3 request to admit Your Honor has the  
4 context.

5 THE COURT: Okay, so Mr.  
6 Doyle can continue to read.

7 ATTORNEY WENTZEL: All right.

8 THE WITNESS: *As a member of*  
9 *the Neighborhood Association, Owners of*  
10 *Two Bedroom Suites are responsible for all*  
11 *costs and expenses of the ownership and*  
12 *operation of the Commercial Unit One,*  
13 *including but not limited to any services*  
14 *that may elect to provide. The*  
15 *furnishings located in the Commercial*  
16 *Unit, meaning all furniture, appliances,*  
17 *moveable equipment, utensils, carpeting,*  
18 *accessories, and other personal property*  
19 *located therein, were previously utilized*  
20 *in connection --*

21 THE COURT: The next page,  
22 Attorney Wilczynski.

23 ATTORNEY WILCZYNSKI: It's  
24 there, Your Honor, it's just -- there's a  
25 bit of a lag on the image.

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1 THE COURT: Oh.

2 THE WITNESS: -- *in*  
3 *connection with the operation of the*  
4 *adjacent Ritz-Carlton Hotel.*

5 **BY ATTORNEY WENTZEL:**

6 Q. All right. And you heard Mr.  
7 Cutrona testify yesterday that these two  
8 buildings used to be part of the hotel,  
9 and that three or four years after the  
10 Ritz-Carlton Club was established, the  
11 hotel made them part of the club; correct?

12 A. Yes.

13 Q. All right. Now, did that  
14 language have any particular significance  
15 to you in analyzing NA's request to admit?

16 A. Yes, because the language here  
17 is pretty clear that all cost and expenses  
18 for the Commercial Unit One, are the  
19 responsibilities of the suites owners.

20 THE COURT: Okay, put it back  
21 down, please so I can see it. Right.  
22 Thank you.

23 ATTORNEY WILCZYNSKI: I'll be  
24 there for you, judge.

25 THE COURT: Okay. Thanks.

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1 **BY ATTORNEY WENTZEL:**

2 **Q.** And can you just refer the  
3 Court to the sentence about the suite  
4 owners' responsibility?

5 **A.** It's about the fifth or sixth  
6 line up. *As a member of the Neighborhood*  
7 *Association, Owners of Two Bedroom Suites*  
8 *are responsible for all costs and expenses*  
9 *of the ownership and operation of the*  
10 *Commercial Unit C-U dash one.*

11 **Q.** All right.

12 **A.** And that struck a bell. I had  
13 not focused on that language before.

14 **Q.** And historically you said that  
15 NA had paid the money to GBCOA for CU-1  
16 and it collected the money from its  
17 members?

18 **A.** Correct.

19 **Q.** All right. Let's put up  
20 Plaintiff's Exhibit 4.

21 Is this one of the parts of the  
22 declarations you reviewed in analyzing  
23 NA's request for admission?

24 **(Plaintiff's Exhibit 4 shared.)**

25 **A.** Yes, I want to see the

Direct - Mr. Doyle

1 exhibit. Yes, this is one of the  
2 documents that I reviewed in connection  
3 with the request for admission.

4 Q. All right. And you see the  
5 Recorder's stamp at the top of the  
6 document?

7 A. Yes, I do.

8 Q. And can you read the date.

9 A. It looks like July 18, 2006.

10 Q. Is that the same date as  
11 Plaintiff's Exhibit 3 was filed?

12 A. I'd have to go back and look.

13 Q. Well, what did you understand  
14 the purpose of Plaintiff's Exhibit 3 and  
15 Plaintiff's Exhibit 4 were?

16 A. They were basically -- my  
17 understanding of the purpose was to  
18 transfer to the big condominium, the Great  
19 Bay Condominium Owners Association the  
20 Buildings G and H, which be part -- which  
21 would comprise the total two bedroom  
22 suites.

23 Q. And this one is titled Fourth  
24 Amendment to Supplementary Declaration,  
25 and the prior exhibit, Exhibit 3, was the

**Direct - Mr. Doyle**

1 Fifth Amendment to the Declaration.  
2 What's your understanding about there  
3 being two sets of declarations?

4 **A.** As I understand it, the big --  
5 the major declaration basically transfers  
6 the real property into the Association.  
7 And the Fourth Amendment to the  
8 Supplemental Declaration divides that  
9 property into specific units.

10 **Q.** All right. And are those the  
11 deeded fractional units?

12 **A.** Yes, they are.

13 **Q.** All right. And can you  
14 authenticate this as a true and accurate  
15 copy of the Fourth Amendment to the  
16 Supplementary Declaration?

17 **A.** This is a -- this has got the  
18 Recorder stamp and it's what we use to  
19 manage one of -- what we consider a key  
20 document in managing the Condominium  
21 Association.

22 **Q.** And, is it maintained as part  
23 of the Condominium Association's official  
24 records to manage the property?

25 **A.** Yes, it is.

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1                   ATTORNEY WENTZEL: Your  
2 Honor, I would like to move into evidence  
3 the Fourth Amendment, which is Plaintiff's  
4 Exhibit 4.

5                   THE COURT: Okay, Attorney --  
6                   ATTORNEY TANKENSON HODGE: I  
7 thought it was admitted and I did not  
8 object.

9                   THE COURT: Okay, what did  
10 you say before that, Attorney Hodge?

11                   ATTORNEY TANKENSON HODGE: I  
12 thought it had been admitted yesterday and  
13 I do not object to its admission.

14                   THE COURT: Okay. I don't  
15 see it as being admitted, but it's  
16 admitted now. Plaintiff's Exhibit 4.

17                   **(Plaintiff's Exhibit 4 admitted.)**

18 **BY ATTORNEY WENTZEL:**

19                   **Q.** Let's go to page three  
20 paragraph five. Can you see that, Mr.  
21 Doyle?

22                   **A.** Yes, I can.

23                   **Q.** Did this paragraph five have  
24 any significance for your analysis of the  
25 issue that NA raised in its request to

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1 admit?

2 **A.** Well, this paragraph  
3 reiterates the obligation of the Owners of  
4 Two Bedroom Suites, shall control the  
5 Neighborhood Association and they'll also  
6 be responsible for all cost and expenses  
7 related to the ownership and operation of  
8 Commercial Unit One, including but not  
9 limited to the services that it may elect  
10 to provide.

11 ATTORNEY TANKENSON HODGE:  
12 Could we get where the witness is reading  
13 from?

14 THE COURT: Okay, answer the  
15 question -- answer the specific question,  
16 Mr. Doyle, do not read at this point.

17 THE WITNESS: Yes, Your  
18 Honor.

19 **BY ATTORNEY WENTZEL:**

20 **Q.** I'm just asking preliminary  
21 whether this section of the Fourth  
22 Supplement to the Declaration had any  
23 relevance to your analysis of the question  
24 NA asked in its request to admit?

25 **A.** Yes, this was very relevant.

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1           **Q.** All right. And why was it  
2 relevant?

3           **A.** It was relevant because it  
4 reiterated what I had seen in another  
5 section of the Declaration with respect to  
6 the responsibilities of Owners of Two  
7 Bedroom Suites.

8           **Q.** All right. And can you read  
9 for the Court the part of section five  
10 that you found to be relevant on the  
11 question of whether transfer would affect  
12 who's responsible.

13           THE COURT: Okay, read all of  
14 section five for me, please -- the first  
15 paragraph of section five. Sorry.

16           THE WITNESS: Yes, Your  
17 Honor. *The twelve(12) Residences which*  
18 *are subject of this amendment are Two*  
19 *Bedroom Suites and, as such, all Owners of*  
20 *Residence Interests therein shall in*  
21 *addition to being Members of the*  
22 *Condominium Association, be mandatory*  
23 *members of the Neighborhood Association,*  
24 *whose contemplated sole purpose shall be*  
25 *to own and operate Commercial Unit CU-1,*



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1        *and which may provide certain services for*  
2        *the exclusive benefit of the occupants*  
3        *from time to time of Two Bedroom Suites*  
4        *whether or not such occupants are Members*  
5        *of the Neighborhood Association. More*  
6        *particularly, and in accordance with the*  
7        *separate organizational and governing*  
8        *documents of the Neighborhood Association,*  
9        *its members shall control the Neighborhood*  
10       *Association and be responsible for all*  
11       *cost and expenses related to the ownership*  
12       *and operation of the Commercial Unit,*  
13       *including but not limited to any services*  
14       *it may elect to provide.*

15                    THE COURT: Okay. And,  
16        Attorney Wentzel, if there was anything  
17        else in particular you needed him to read  
18        that's fine you can ask.

19                    ATTORNEY WENTZEL: No, Your  
20        Honor, that was it.

21                    THE COURT: Okay.

22        **BY ATTORNEY WENTZEL:**

23                    **Q.** Now, there is a reference to  
24        preface my next set of questions in here  
25        that you read to the organizational and

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1 governing documents of the Neighborhood  
2 Association; right?

3 **A.** Yes.

4 **Q.** And did you review the  
5 organizational and governing documents of  
6 the Neighborhood Association as part of  
7 your analysis of this issue?

8 **A.** Yes, I reviewed the  
9 organization -- I reviewed the Articles of  
10 Incorporation and the Bylaws of the  
11 Neighborhood Association. Both.

12 **Q.** All right. Let's look at  
13 Exhibit -- Plaintiff's Exhibit 7.

14 THE COURT: Yes.

15 ATTORNEY WILCZYNSKI: It's  
16 coming up now, Your Honor.

17 THE COURT: Okay.

18 **(Plaintiff's Exhibit 7 shared.)**

19 ATTORNEY WENTZEL: And you  
20 could page to the first page of the  
21 Articles. Thank you.

22 **BY ATTORNEY WENTZEL:**

23 **Q.** Mr. Doyle, do you recognize  
24 this document as the Neighborhood  
25 Association's Articles of Incorporation?

Direct - Mr. Doyle

1           **A.** Yes, I do.

2           **Q.** And can you authenticate --  
3 you've seen this document?

4           **A.** I have seen this document.

5           **Q.** Is it maintained as part of  
6 GBCOA's official governing documents?

7           **A.** Yes, it is. It's maintained  
8 as part of GBCOA's documents because they  
9 are -- the Neighborhood Association is a  
10 member of GBCOA.

11           **Q.** All right. And can you  
12 authenticate this document as a true and  
13 correct copy of the Articles?

14           **A.** Yes, I can.

15           ATTORNEY WENTZEL: Can we go,  
16 Your Honor, to Article 1 right there on  
17 the -- underneath the preamble?

18           THE COURT: Yes.

19 **BY ATTORNEY WENTZEL:**

20           **Q.** All right. And who is the --  
21 it's abbreviated Association, and who does  
22 it refer to here?

23           **A.** It refers to The Neighborhood  
24 Association.

25           ATTORNEY WENTZEL: All right.

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1 And can we go to page two, Your Honor?

2 THE COURT: Yes.

3 ATTORNEY WENTZEL: And in  
4 particular section three.

5 Can you see all of it or we go a  
6 little more?

7 THE COURT: You said section  
8 three? Okay, this is four -- five.

9 ATTORNEY WENTZEL: No,  
10 there's -- yeah, okay, there's section  
11 three in the middle.

12 THE COURT: Oh, okay.

13 ATTORNEY WILCZYNSKI: We're  
14 talking about Section 3 of Article 5; is  
15 that correct?

16 THE COURT: Yes.

17 ATTORNEY WENTZEL: Yes.  
18 Thank you, Attorney Wilczynski.

19 **BY ATTORNEY WENTZEL:**

20 **Q.** Now, does this section of  
21 Article 5 address the payment of annual  
22 common expenses?

23 **A.** Yes, it does.

24 **Q.** All right. And could you read  
25 Section 3 for the Court.

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1 THE COURT: Well, it hasn't  
2 been admitted as yet.

3 ATTORNEY WENTZEL: Oh, I'm  
4 sorry, Your Honor. I would move for the  
5 admission of Plaintiff's Exhibit 7 into  
6 evidence.

7 ATTORNEY TANKENSON HODGE: I  
8 have no objection.

9 THE COURT: Okay.  
10 Plaintiff's Exhibit 7, the Articles of  
11 Incorporation is admitted.

12 **(Plaintiff's Exhibit 7 admitted.)**

13 All right. You may proceed,  
14 Attorney Wentzel. Thanks.

15 ATTORNEY WENTZEL: Thank you,  
16 Your Honor.

17 Would you, please, read for the  
18 Court Section 3, Mr. Doyle, of Article 5.

19 **A.** *Annual common charges for the*  
20 *Association shall be assessed on each*  
21 *Suite Interest in an equal amount 1/288th*  
22 *of the annual common charges of the*  
23 *Association, and shall be timely paid by*  
24 *the owner thereof to the Association in an*  
25 *amount to be set by the Board of*

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1 *Directors.*

2 **Q.** All right. Just to clarify.  
3 Thank you. The sentence in line two said,  
4 "in an amount equal to 1/288"?

5 **A.** Yes.

6 **Q.** All right. And it refers to  
7 the annual common charges of the  
8 Association referring to what entity here?

9 **A.** This is referring to The  
10 Neighborhood Association.

11 **Q.** And, what does the 1/288  
12 equation refer to?

13 **A.** There are 288 Interests --  
14 Resident Interests in the two suite  
15 buildings, and so each Suite Interest  
16 would have its share of the total bill.

17 **Q.** All right. What significance  
18 did this language that you read have for  
19 your analysis of the question from NA's  
20 request to admit that you were analyzing?

21 **A.** Well, NA -- this language  
22 basically indicated that the Owners of the  
23 Two Bedroom Suites were responsible for  
24 the common charges related to the expenses  
25 of the Association. One of the expenses

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1 of the Association is their share in the  
2 common expenses which is budgeted by GBCOA  
3 every year.

4 **Q.** All right. And is that based  
5 on -- does CU-1 have a share in the common  
6 expenses of the Condominium?

7 **A.** CU-1 has a share in the common  
8 expenses of the Condominium when it was --  
9 when CU-1 was -- when it was setup by the  
10 Declarant, CU-1 has an obligation to pay  
11 18 Interests of dues to cover its share of  
12 the condominium expenses -- general  
13 condominium expenses.

14 **Q.** Are those the assessments that  
15 are the subject of the invoices that the  
16 GBCOA had issued which are the subject of  
17 NA's motion in this case?

18 **A.** Yes.

19 **Q.** Did you find anything in the  
20 Declarations or in NA's governing  
21 documents that suggested to you or  
22 indicated that the liabilities of the  
23 Suites Owners to pay these expenses would  
24 be nullified if somebody else own CU-1?

25 **ATTORNEY TANKENSON HODGE:**

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1 Object to the form of the question, Your  
2 Honor. There's no -- the issue --  
3 nullification isn't in anything the  
4 witness testified. The question is, who  
5 is responsible for the common charges for  
6 the Unit?

7 ATTORNEY WENTZEL: That's  
8 what I'm asking, Your Honor. He's --

9 ATTORNEY TANKENSON HODGE:  
10 But the nullified -- the term "nullified"  
11 implies that nobody's responsible.

12 THE COURT: Okay, just  
13 rephrase the question.

14 ATTORNEY WENTZEL: Okay, I  
15 can use a different term. Thank you.

16 THE COURT: Okay.

17 **BY ATTORNEY WENTZEL:**

18 **Q.** Did you see anything to  
19 indicate that these obligations of the  
20 Suites Owners to pay these CU-1 expenses  
21 would change or disappear or go away if  
22 the deed to CU-1 was transferred to GBCOA?

23 **A.** I looked -- I specifically  
24 looked to see if there was any language  
25 anywhere in the Declaration, the



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1 Supplementary Declaration or the  
2 Amendments that would basically eliminate  
3 the obligation of Owners of Two Bedroom  
4 Suites to pay these expenses and could not  
5 find it.

6 Q. Thank you.

7 Your Honor, may the witness be  
8 shown Exhibit -- Plaintiff's Exhibit 8?

9 THE COURT: Yes.

10 ATTORNEY WILCZYNSKI: One  
11 moment, please.

12 THE COURT: Yes.

13 ATTORNEY WILCZYNSKI: It is  
14 on my screen. It will populate for you in  
15 just a moment.

16 THE COURT: Okay.

17 **(Plaintiff's Exhibit 8 shared.)**

18 ATTORNEY WILCZYNSKI:  
19 Hopefully you have it now.

20 THE COURT: Yes.

21 ATTORNEY WILCZYNSKI: I will  
22 scroll down to the first page.

23 **BY ATTORNEY WENTZEL:**

24 Q. Mr. Doyle, can you identify  
25 what this document is that's marked as

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1 Plaintiff's Exhibit 8?

2 **A.** These are the -- this a copy  
3 of the Bylaws of The Neighborhood  
4 Association.

5 **Q.** All right. And can you  
6 authenticate this exhibit as a true and  
7 correct copy of NA's bylaws?

8 **A.** Yes, I can.

9 **Q.** And is this part of the  
10 governing documents that are the GBCOA's  
11 official governing records?

12 **A.** Yes, it is.

13 **Q.** And did you also review and  
14 consider this document in analyzing NA's  
15 request for admission?

16 **A.** Yes, I did.

17 ATTORNEY WENTZEL: Your  
18 Honor, we would move into evidence  
19 Plaintiff's Exhibit 8.

20 ATTORNEY TANKENSON HODGE: No  
21 objection.

22 THE COURT: Okay. All right.  
23 Plaintiff's Exhibit 8 is admitted.

24 **(Plaintiff's Exhibit 8 admitted.)**

25 ATTORNEY WENTZEL: Thank you.

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1 May we look at page 13, Your Honor?

2 THE COURT: Yes.

3 **BY ATTORNEY WENTZEL:**

4 Q. And in particular, Mr. Doyle,  
5 I want to draw your attention to Section 4  
6 on page 13, it's at the top.

7 And, Mr. Wilczynski, if you could  
8 stop at 12 so we can show the Court what  
9 article this is. Okay, right there.

10 Do you see, Mr. Doyle, Article  
11 10 titled "Assessments, Charges, and  
12 Collection"?

13 A. Yes, I do.

14 ATTORNEY WENTZEL: All right.  
15 And may we go to page 13? All right.  
16 Thank you.

17 In Section 4 of Article 10  
18 titled, "Liability for Assessments," do  
19 you see that, Mr. Doyle?

20 A. Yes, I do.

21 Q. Could you please read that for  
22 the benefit of the Court.

23 A. *Each member holding title to a*  
24 *Suite Interest regardless of how the title*  
25 *is acquired, shall be liable for*

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1       *assessments coming due while a Member of*  
2       *the Association. Each Member shall be*  
3       *jointly and severally liable with the*  
4       *previous Member for all unpaid assessments*  
5       *due and payable up to the time of the*  
6       *conveyance of the Suite Interest in the*  
7       *Condominium. Liability for assessments*  
8       *may not be avoided by abandonment or*  
9       *waiver of use for any enjoyment of any*  
10       *element of the Association property.*

11               **Q.** And did this -- what  
12       significance did this language have for  
13       you as you were evaluating NA's request to  
14       admit? And maybe just to remind the  
15       Court, what did the request to admit ask  
16       you to admit?

17               **A.** The request to admit ask me to  
18       admit that if Your Honor found that the  
19       deed was properly transferred that the  
20       GBCOA would bill all of its members for  
21       the cost of Commercial Unit 1.

22               **Q.** All right. And what  
23       significance did the language you just  
24       read, and in particular that last  
25       sentence, have for your analysis of that

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1 issue?

2 **A.** When I read this I came to the  
3 conclusion that notwithstanding a transfer  
4 of the deed, the Owners of Two Bedroom  
5 Suites would be responsible because they  
6 cannot abandon their obligation or waiver  
7 of use. They just can't -- they weren't  
8 able to do it.

9 **Q.** All right. And can we look at  
10 Section 7 on the same page, just a couple  
11 paragraphs below that. It's titled  
12 "Denial of Use of Privileges". Do you see  
13 that, Mr. Doyle?

14 **A.** I see it.

15 **Q.** Can you read that for the  
16 benefit of the Court.

17 **A.** Yes. "In the event a Member  
18 becomes delinquent in the payment of any  
19 assessments levied by the Association's  
20 board or the duly appointment management  
21 company, the management company is  
22 authorized to deny use of the  
23 Association's accommodations, the Lounge  
24 and property to such delinquent Member and  
25 to any person claiming usage under such

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1 delinquent Member to the extent allowed by  
2 these Bylaws and the applicable law."

3 **Q.** And what significance did this  
4 language have for the issues you were  
5 looking at?

6 **A.** This -- I read this as the  
7 only people who could deny use of the  
8 property was the Management Company.

9 **Q.** All right. And based on your  
10 review of all of these documents -- by the  
11 way, let me just close it out. Were there  
12 any other documents that were of  
13 significance to you as you evaluated this  
14 issue?

15 **A.** Yes, the Supplementary  
16 Declaration was key.

17 **Q.** And that was Plaintiff's  
18 Exhibit -- we looked at that and you  
19 testified about it, it's Plaintiff's  
20 Exhibit 4.

21 All right. And what conclusion  
22 did you make from your review of these  
23 governing documents about what Mr. Barry,  
24 NA's lawyer, asked you in the other case

25 **A.** He asked me -- I came to the

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1 conclusion that the obligation for these  
2 costs irrespective of the decision on the  
3 ownership of the deed belong to the Owners  
4 of Two Bedroom Suites.

5 **Q.** And --

6 **A.** They were not obligations that  
7 I thought the GBCOA board could put on the  
8 whole membership of the GBCOA, because  
9 that's not what the document say. The  
10 documents were pretty clear.

11 **Q.** And did you discuss your  
12 analysis and conclusion with the other  
13 members of the GBCOA board?

14 **A.** Yes, we had a discussion with  
15 the other members of the board.

16 **Q.** And did the board make any  
17 decisions based on your analysis of this  
18 issue that NA raised?

19 **A.** Well, the board sought advice  
20 of counsel to confirm our conclusion.

21 **Q.** All right. Well, I don't want  
22 you to -- I'm glad that you mentioned  
23 that, but I don't want you to disclose  
24 what the advice of counsel was. So what  
25 did you do, what did the GBCOA board do as

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1 a result of these conclusions you reached  
2 in analyzing the issue that NA raised?

3 **A.** We reached out to the  
4 management company and discussed it with  
5 them.

6 **Q.** Can you describe these  
7 discussions for the Court?

8 **A.** We had some phone  
9 conversations, and then we had a meeting  
10 in Chicago with senior officers of  
11 Marriott Vacation Worldwide, with Barbara  
12 Egolf who is their senior general counsel,  
13 Lee Cunningham who is their executive vice  
14 president, Richard Hayward who is a vice  
15 president somewhere, I'm not sure what his  
16 full title is. And Stacey Jackson-Rauso  
17 who is one of the contacts we have with  
18 the Marriott Vacation Club and is also on  
19 the secretary to the board of the Marriott  
20 Vacation Trust Owners Association.

21 **ATTORNEY TANKENSON HODGE:** We  
22 have no objection to testimony about what  
23 these persons may have said during any  
24 such meeting as hearsay these witnesses  
25 statements --



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1 THE COURT: Well, he hasn't  
2 asked that question as yet, so.

3 ATTORNEY TANKENSON HODGE:  
4 I'm afraid that since the witness has been  
5 providing narrative answers and I'm just  
6 concerned that we get to objectionable  
7 testimony before I'd have the opportunity  
8 to raise that objection.

9 THE COURT: Okay. That's  
10 clear. Sustained.

11 **BY ATTORNEY WENTZEL:**

12 Q. Okay. What did you say to the  
13 Marriott people in this meeting about  
14 these issues?

15 ATTORNEY TANKENSON HODGE: So  
16 I'm gonna object --

17 THE COURT: Are you speaking  
18 about the phone conversation or the actual  
19 meeting in Chicago?

20 ATTORNEY WENTZEL: This is  
21 the meeting in Chicago. Thank you, Your  
22 Honor.

23 THE COURT: Okay.

24 Q. Can you describe for the Court  
25 --

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1 THE COURT: One second.  
2 Attorney Hodge.

3 ATTORNEY TANKENSON HODGE:  
4 Yes. I'm gonna object to this on the  
5 grounds that whatever this witness may say  
6 he said to members of the management  
7 company is irrelevant to the proceedings  
8 before Your Honor. Just no relevance at  
9 all.

10 ATTORNEY WENTZEL: The reason  
11 it's going to be relevant, Your Honor, is  
12 because it's not being offered for the  
13 truth --

14 THE COURT: No, it's  
15 overruled. Overruled.

16 ATTORNEY WENTZEL: All right.

17 THE COURT: Okay. So, Mr.  
18 Doyle, you could only testify as to what  
19 you said, what you mentioned in this  
20 meeting in Chicago. Is that clear?

21 THE WITNESS: Yes, Your  
22 Honor.

23 At the meeting in Chicago we  
24 asked the Management Company to go forward  
25 and proceed to bill the Owners of Two

Direct - Mr. Doyle

1 Bedroom Suites.

2 **BY ATTORNEY WENTZEL:**

3 **Q.** And why did you want the  
4 Management Company to do that?

5 **A.** Management Company has the  
6 entire infrastructure. The GBCOA has  
7 never issued its own bill. We didn't have  
8 a contract with Concord, we didn't have a  
9 separate bank account; we've never done  
10 this before. The Management Company has  
11 the list of owners. All -- they have all  
12 the mechanics in place.

13 **Q.** Did the Management Company  
14 agree?

15 **A.** No.

16 **Q.** Did you explain to the  
17 Management Company why you concluded the  
18 basis for your conclusions about why the  
19 suites owners should be billed for these  
20 unpaid CU-1 share of the common expenses?

21 ATTORNEY TANKENSON HODGE:  
22 Again, I object, Your Honor, this is  
23 irrelevant.

24 THE COURT: Overrule.

25 THE WITNESS: We explained in

Direct - Mr. Doyle

1 great detail how we got to the conclusion  
2 based on the language in the Declaration,  
3 how the Owners of Two Bedroom Suites were  
4 obligated.

5 **BY ATTORNEY WENTZEL:**

6 Q. And, did -- was anything said  
7 to you that demonstrated you were wrong  
8 about your conclusion?

9 ATTORNEY TANKENSON HODGE: I  
10 will object again, Your Honor, this is  
11 clearly --

12 THE COURT: Sustained.

13 Q. Okay. After you explained  
14 that, did the Management Company change  
15 their position about whether they would do  
16 the billing?

17 ATTORNEY TANKENSON HODGE:  
18 Objection, Your Honor, this is clearly a  
19 request to have effectively the hearsay  
20 response of the Management Company.

21 THE COURT: Sustained.

22 ATTORNEY WENTZEL: Your  
23 Honor, it's offered for the effect on the  
24 hearer, GBCOA, what they had to do because  
25 the Management Company declined. It's not

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1 offered to prove whether or not GBCOA is  
2 right, it's offered to prove why they went  
3 and did the billing, which is the subject  
4 --

5 THE COURT: But does it make  
6 a difference? He's already stated or  
7 testified that they spoke to them, they  
8 asked them to do a particular act, which  
9 is to bill the Owners of the Two Bedroom  
10 Units; they refused. They rejected. And  
11 they went ahead and they still did it.  
12 GBCOA still went ahead and issue these  
13 invoices.

14 ATTORNEY WENTZEL: All right.

15 THE COURT: So it doesn't  
16 matter at this point what the rational was  
17 -- the rational or whatever the issue was  
18 with respect to the Management Company.  
19 The point is that he testified that they  
20 rejected it.

21 **BY ATTORNEY WENTZEL:**

22 Q. And do you have -- did you  
23 form any conclusions about why the  
24 Management Company rejected that?

25 ATTORNEY TANKENSON HODGE:

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1 Again, Your Honor, I object --

2 THE COURT: It's irrelevant.

3 It's irrelevant. Sustained.

4 ATTORNEY WENTZEL: Well, Your  
5 Honor, it's already established that the  
6 Management Company and the Developer, and  
7 the Marriott Vacation Club, who Miss  
8 Leighton-Hermann said is all Marriott,  
9 that they own 49 percent of the suites and  
10 would be responsible for 49 percent of  
11 what we were asking them to bill. That is  
12 relevant.

13 ATTORNEY TANKENSON HODGE: I  
14 want to really object to this, Your Honor,  
15 it's clearly a backhanded way to invite  
16 hearsay into the record. The Court has  
17 already ruled it's improper, it's also  
18 irrelevant. The only way this witness can  
19 testify about why he thinks they didn't  
20 agree, is to tell us about what he's  
21 understood from what they said. That is  
22 hearsay, and it's also irrelevant.

23 We've heard from Miss  
24 Leighton-Hermann that the Management  
25 Company did not agree to do these bills.

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1 We've heard from Mr. Doyle they didn't  
2 agree. The only follow along question can  
3 be, what did you do next? This is  
4 hearsay.

5 ATTORNEY WENTZEL: Let me ask  
6 a different question, Your Honor.

7 THE COURT: Sustain.  
8 Sustain.

9 **BY ATTORNEY WENTZEL:**

10 Q. Mr. Doyle, does the Marriott  
11 Vacation Club have an ownership interest  
12 in the suites?

13 A. Yes.

14 Q. And are they members of NA?

15 A. Yes.

16 Q. What is their ownership  
17 interest in the suites?

18 A. The Marriott Vacation Trust, I  
19 believe, owns a hundred and thirty-three  
20 interest of the 288 suite interests.

21 Q. And that translates to about  
22 46 percent; right?

23 A. It's 40 some odd percent when  
24 you add in the developer units which is an  
25 affiliate of the Trust, they own 49

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1 percent of the suite interest.

2 THE COURT: So the total is  
3 49 percent between Marriott Vacation Club  
4 and Ritz-Carlton?

5 THE WITNESS: Correct, Your  
6 Honor. The Marriott Vacation Trust.

7 THE COURT: Marriott Vacation  
8 Trust. Okay.

9 **BY ATTORNEY WENTZEL:**

10 Q. And what would the result of  
11 their ownership interest be if they went  
12 ahead and issued these invoices for the  
13 unpaid CU-1 assessments?

14 ATTORNEY TANKENSON HODGE: I  
15 object. I object, Your Honor. This  
16 witness can't answer that question. If --  
17 the witness has already testified that the  
18 assessments that went to NA would have  
19 been billed NA members. So the issue is  
20 just not properly before him of what would  
21 have happened if. It's speculation.

22 THE COURT: Sustained.

23 ATTORNEY WENTZEL: Okay. I  
24 think counsel just explained what would  
25 have happened.



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1 **BY ATTORNEY WENTZEL:**

2 **Q.** Okay, now when the Management  
3 Company declined to bill itself what did  
4 the GB- --

5 THE COURT: Rephrase the  
6 question, please.

7 **Q.** When the Management Company  
8 declined your request to invoice these  
9 unpaid assessments -- and by the way, how  
10 much were the unpaid assessments at this  
11 time?

12 **A.** The total unpaid assessments  
13 including late fees and interests was over  
14 a million dollars.

15 **Q.** All right. And what did the  
16 GBCOA board do after the Management  
17 Company declined to issue the invoices for  
18 these millions of dollars of unpaid  
19 assessments?

20 **A.** We had to come up with our own  
21 plan to invoice suite owners for those  
22 unpaid CU-1 assessments.

23 **Q.** All right. And when -- just  
24 so we set the timeline, when was the  
25 meeting in Chicago with these senior

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1 Marriott officers that you testified to?

2 **A.** Late May of this year.

3 **Q.** Of 2021?

4 **A.** Correct.

5 **Q.** All right. And after that you  
6 said then you had to come up with the  
7 plan, tell me how the GBCOA board came up  
8 with the plan to do the billing itself?

9 **A.** We first needed to find some  
10 organization that could logistically put  
11 together the bill and bill the 288  
12 interests. And so we looked at a number  
13 of different options. And finally  
14 concluded that Concord the entity that  
15 provides services to the Management  
16 Company would be the best choice to issue  
17 these bills.

18 **Q.** All right. And did you run  
19 into any obstacles in having Concord issue  
20 the bills?

21 **A.** Yes. We reached out to  
22 Concord to get them to issue the bills,  
23 and we were told by --

24 ATTORNEY TANKENSON HODGE:  
25 Objection, Your Honor. I'm gonna object

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1 to this witness telling --

2 THE COURT: You cannot say --  
3 sustained. Mr. Doyle, you cannot say what  
4 any representative of Concord said. Do  
5 you understand that?

6 THE WITNESS: Yes, Your  
7 Honor.

8 THE COURT: Okay.

9 ATTORNEY TANKENSON HODGE:  
10 And respectfully as well, Your Honor, I  
11 would like to object to the relevance of  
12 this line of questions. The issue is, the  
13 Great Bay Condominium Association did  
14 issue these invoices to The Neighborhood  
15 Association members. I'm not sure why  
16 they found it complicated to do that, that  
17 would be relevant to this hearing.

18 ATTORNEY WENTZEL: It's --  
19 I'm gonna tie up the relevance, Your  
20 Honor.

21 THE COURT: Overrule.  
22 Overrule.

23 **BY ATTORNEY WENTZEL:**

24 Q. All right. Did Concord agree  
25 to do the billing for the GBCOA board?

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1           **A.** Initially the Concord did not  
2 agree to do the billing under the current  
3 contract that the management company had  
4 with Concord.

5           **Q.** Okay. Did you find a way to  
6 solve that issue?

7           **A.** We basically had to create our  
8 own contract with Concord to develop a  
9 billing.

10          **Q.** When approximately did you  
11 finally arrived at a separate contract  
12 with Concord for this billing?

13          **A.** Sometime around the end of the  
14 summer. August -- end of August.

15          **Q.** All right. And -- were you  
16 finished?

17          **A.** Yes.

18          **Q.** And what was the expected  
19 timeframe for when all the work could be  
20 done to create the bills and setup the  
21 systems and infrastructure and send the  
22 bills out?

23          **A.** The calculated timeline is we  
24 had to get all the names of all the suite  
25 owners, we had to get from Marsha

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1 Leighton-Hermann the amount -- specific  
2 amount of unpaid CU-1 assessments,  
3 interest, late fees, etcetera. And then  
4 we had to basically give Concord 30 plus  
5 days lead time to fit that into their  
6 schedule.

7 Q. And so what was the projected  
8 date for those invoices to go out?

9 A. The projected date for the  
10 invoices to go out was in mid October.

11 Q. All right. And when you -- at  
12 that point when you had everything in  
13 place and the invoices were projected to  
14 go out in mid October, did the GBCOA board  
15 of directors have any expectations about  
16 payment of these invoices?

17 ATTORNEY TANKENSON HODGE:  
18 Objection. Irrelevant.

19 THE COURT: I'm sorry.  
20 Repeat the question, Attorney Wentzel.

21 ATTORNEY WENTZEL: Yeah.

22 Did you have any expectations  
23 about whether the invoices would get paid?

24 THE COURT: Overrule.

25 THE WITNESS: We were very

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1 confident -- we were highly confident that  
2 Marriott would pay the invoice. We  
3 thought that the Marriott Vacation Club  
4 also would pay its invoice.

5 **BY ATTORNEY WENTZEL:**

6 Q. What was the basis for your  
7 confidence?

8 ATTORNEY TANKENSON HODGE: So  
9 objection, Your Honor, I think this is  
10 clearly another invitation to hearsay.  
11 The basis for their confidence would have  
12 to be communications with the same people  
13 that the witness has tried to talk about.

14 THE COURT: Okay. So you're  
15 asking about his confidence with respect  
16 to the Marriott Vacation Trust --

17 ATTORNEY WENTZEL: Yes.

18 THE COURT: -- only?

19 ATTORNEY WENTZEL: I'm sorry.

20 THE COURT: Marriott Vacation  
21 Trust or the management -- or the 49  
22 percent of this only at this point?

23 ATTORNEY WENTZEL: The 49  
24 percent only.

25 ATTORNEY TANKENSON HODGE: So

Direct - Mr. Doyle

1 the question is, what was the basis for  
2 their confidence that --

3 THE COURT: I understand. I  
4 understand.

5 ATTORNEY WENTZEL: And, Your  
6 Honor, what -- yesterday the entire  
7 presentation and argument was that because  
8 they had options to lock people out that's  
9 what they were planning to do, and they  
10 only stop because Your Honor issued a TRO.  
11 And what their expectations were about  
12 getting paid is relevant and Mr. Doyle is  
13 gonna explain the relevance as to whether  
14 they had any intention to lock anyone out.

15 ATTORNEY TANKENSON HODGE: So  
16 that's a different --

17 THE COURT: Okay. So whether  
18 Mr. -- so any intentions of the board,  
19 GBCOA board to lock anyone out, is that  
20 what you're saying?

21 ATTORNEY WENTZEL: That's  
22 where it's going. Right.

23 ATTORNEY TANKENSON HODGE:  
24 But respectfully, Your Honor, again, the  
25 objection is to questions asking this

Direct - Mr. Doyle

1 witness what the basis was for his  
2 confidence about this particular group of  
3 owners paying, and that can only be based  
4 on hearsay.

5 THE COURT: Okay. It's  
6 overruled.

7 Mr. Doyle, in your response to  
8 this particular question, you cannot speak  
9 or say anything with respect to what the  
10 Club or the Management Company said or any  
11 of -- well, what they said at any point in  
12 time as it relates to your conclusion that  
13 they were going to pay their share.

14 ATTORNEY WENTZEL: Your  
15 Honor, respectfully, this testimony is  
16 admissible, because it goes to the effect  
17 on the hearer, GBCOA. It's not offered  
18 for the truth of what the individual said.  
19 It's offered to show GBCOA's expectations  
20 and their response to what they heard, and  
21 therefor what they plan to do based on  
22 that. It's not hearsay 'cause it's not  
23 offered to prove the truth of what they  
24 said.

25 THE COURT: Okay. All right.



**Direct - Mr. Doyle**

1 I will allow Mr. Doyle to testify.

2 It's overruled, Attorney Hodge.

3 Go ahead, Mr. Doyle.

4 THE WITNESS: Your Honor, the  
5 reason we were confident had nothing to do  
6 with what people say. We knew that both  
7 the Developer, Marriott and the Marriott  
8 Vacation Trust were familiar with the  
9 Declaration and its documents. And in my  
10 prior testimony I discussed the  
11 Supplemental Declaration. In the  
12 Supplemental Declaration Section 8.2d  
13 basically says, if there's a dispute in  
14 connection with amounts assessed, you do  
15 not -- you cannot -- you have to pay those  
16 amounts and then dispute them. And so we  
17 were pretty confident that both of these  
18 sophisticated organizations would know  
19 that and would make those payments.

20 **BY ATTORNEY WENTZEL:**

21 Q. And, Mr. Doyle, for the  
22 Court's benefit --

23 Your Honor, may we refer to  
24 Plaintiff's Exhibit 9, which is already in  
25 evidence, I believe.

Direct - Mr. Doyle

1 THE COURT: Yes.

2 ATTORNEY WENTZEL: And out of  
3 an abundance of caution, Your Honor, can  
4 -- would the Court confirm that this one  
5 had been admitted?

6 THE COURT: I'm checking.  
7 It's admitted. Plaintiff Exhibit 9  
8 admitted.

9 ATTORNEY WENTZEL: All right.  
10 And may we look at --

11 THE COURT: And that is the  
12 original declaration?

13 ATTORNEY WENTZEL: Yes, Your  
14 Honor.

15 THE COURT: Okay. Very well.

16 ATTORNEY WENTZEL: And may we  
17 look at page ten of Plaintiff's Exhibit 9.

18 **(Plaintiff's Exhibit 9 shared.)**

19 ATTORNEY WILCZYNSKI:  
20 Eventually, Your Honor, I'll figure out to  
21 go page down instead of scrolling.

22 THE COURT: Okay.

23 ATTORNEY WILCZYNSKI: I am  
24 now at page ten. Is there a specific  
25 portion of the page you want?

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1                   ATTORNEY WENTZEL: Yes, at  
2 the last paragraph on page ten.

3                   ATTORNEY WILCZYNSKI: It's  
4 displaying for me.

5 **BY ATTORNEY WENTZEL:**

6                   **Q.** All right. And if you could  
7 look at the last sentence of that  
8 paragraph, Mr. Doyle. Is that the part of  
9 the Declaration you're referring to about  
10 all of the members having to pay  
11 assessments when they're due?

12                   **A.** Yes.

13                   **Q.** Can you read the particular  
14 language?

15                   **A.** Yes. *Each Member of a*  
16 *Residence is personally liable for all*  
17 *assessments made against the Resident*  
18 *pursuant to the Declaration, and the*  
19 *Members Association may bring an action*  
20 *for a money judgement against the*  
21 *delinquent Member to collect all sums due*  
22 *the Members Association, including*  
23 *interest, late charge, costs and*  
24 *reasonable attorney fees.*

25                   **Q.** All right. And then going to

Direct - Mr. Doyle

1 the sentence -- two sentences away  
2 starting, "No Member".

3 **A.** "No Member may withhold  
4 payment of any regular or special  
5 assessment or any portion thereof because  
6 of any dispute which may exist between  
7 that Member and the Members Association,  
8 the directors of the Members Association,  
9 the manager retained by the Members  
10 Association or the Declarant or any of  
11 them, but rather each Member shall pay all  
12 assessments when due pending the  
13 resolution of any dispute."

14 **Q.** All right. And you explained  
15 that was the basis for your expectation  
16 that the Developer who drafted these  
17 declarations and the Marriott Vacation  
18 Trust would pay the assessments; correct?

19 **A.** Yes.

20 **Q.** Now, does GBCOA -- you  
21 mentioned you asked the Management Company  
22 to issue these bills and they decline? Do  
23 you recall that?

24 **A.** Yes.

25 **Q.** Does the GBCOA, although

Direct - Mr. Doyle

1 without the infrastructure, does the GBCOA  
2 board of directors have the power to  
3 assess cost on the members of the  
4 Association?

5 **A.** Yes.

6 **Q.** And where does that power come  
7 from?

8 **A.** It comes from the Declaration  
9 and the other governing documents.

10 **Q.** All right. The -- turning --  
11 staying on Plaintiff's Exhibit 9, if we go  
12 to paragraph -- first I'll give you the  
13 page.

14 First let's look at on page 12  
15 -- I'm sorry, Mark, to get oriented, so  
16 the Court can orient let's start on page  
17 ten.

18 ATTORNEY WILCZYNSKI: Upper  
19 page ten?

20 ATTORNEY WENTZEL: It's going  
21 to -- I'm sorry it's page 11. We were  
22 just at ten. The -- paragraph ten on page  
23 11.

24 ATTORNEY WILCZYNSKI: It's  
25 there.

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1 **BY ATTORNEY WENTZEL:**

2 **Q.** And this is the section of the  
3 Declaration about "Maintenance, Alteration  
4 and Improvement", correct, Mr. Doyle?

5 **A.** Yes.

6 **Q.** And subpart (a) (1), what does  
7 that discuss?

8 **A.** It discusses the interior of  
9 the residence and what can be done.

10 **Q.** By who?

11 **A.** The Association.

12 **Q.** GBCOA?

13 **A.** Yes.

14 **Q.** All right. And what parts  
15 according to this document are the GBCOA  
16 responsible for?

17 **A.** We're responsible for every-  
18 -- the four walls, the floor, the ceiling.  
19 All the mechanical operations for all the  
20 residences.

21 **Q.** All right. Let's look at the  
22 next page.

23 THE COURT: One second. So  
24 this paragraph ten refers to all 288, not  
25 the interest, but the actual structure or

Direct - Mr. Doyle

1 the actual units themselves; is that  
2 correct?

3 THE WITNESS: It actually  
4 refers to all the units, Your Honor, not  
5 just the suite units. All 1200 --

6 THE COURT: All units? Okay.

7 **BY ATTORNEY WENTZEL:**

8 **Q.** All right. And then --

9 THE COURT: This is except  
10 the lounge?

11 THE WITNESS: Correct.

12 THE COURT: This does not  
13 include the lounge? Okay.

14 THE WITNESS: But the lounge  
15 is a residence, Your Honor.

16 THE COURT: Okay.

17 THE WITNESS: It's --

18 THE COURT: It's a unit?

19 THE WITNESS: It's a unit.

20 **Q.** All right, and if we continue  
21 to the next page, subparagraph (c) that  
22 talks about the "Common Elements and  
23 Limited Common Elements"; correct?

24 **A.** Yes.

25 **Q.** And could you read that

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1 section for the benefit of the Court.

2 **A.** "The Members Association shall  
3 maintain, repair, and replace all Common  
4 Elements and Limited Common Elements."  
5 Period.

6 ATTORNEY WENTZEL: All right.  
7 And, if we go to Plaintiff's Exhibit 5.  
8 May I show the witness Plaintiff's Exhibit  
9 5?

10 THE COURT: Yes.

11 **(Plaintiff's Exhibit 5 shared.)**

12 ATTORNEY WILCZYNSKI: Are you  
13 seeing Exhibit 5?

14 THE COURT: Yes.

15 **BY ATTORNEY WENTZEL:**

16 **Q.** Mr. Doyle, can you identify  
17 this document marked as Plaintiff's  
18 Exhibit 5.

19 **A.** Yes, these are the Articles of  
20 Incorporation for the Great Bay  
21 Condominium Owners Association, Inc.

22 **Q.** And do you see the stamp up at  
23 the top indicating that it was filed with  
24 the Office of the Lieutenant Governor  
25 Division of Corporations, St. Thomas?



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1           **A.** Yes, I do.

2           **Q.** And is this document part of  
3 the GBCOA's official governing documents?

4           **A.** Yes, it is.

5           ATTORNEY WENTZEL: Your  
6 Honor, I would move for Plaintiff's  
7 Exhibit 5 into evidence.

8           THE COURT: Any objections?

9           ATTORNEY TANKENSON HODGE:  
10 No, Your Honor.

11           THE COURT: Okay.  
12 Plaintiff's Exhibit 5, Articles of  
13 Incorporation with respect to Great Bay  
14 Condo Association is admitted.

15           **(Plaintiff's Exhibit 5 admitted.)**

16           **BY ATTORNEY WENTZEL:**

17           **Q.** All right. And looking at  
18 Article 2 on this same page, Mr. Doyle,  
19 "Objects and Purposes." Do you see that?

20           **A.** Yes, I do.

21           **Q.** And then it lists Objects and  
22 Purposes in A, B, C and D; correct?

23           **A.** Correct.

24           **Q.** All right. And if you --  
25 could you read for the Court's benefit

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1 paragraph "B"?

2 **A.** "B" as in boy?

3 **Q.** Yes.

4 **A.** *To promote the general welfare*  
5 *of the Association and its Members and to*  
6 *enforce the provisions of the*  
7 *Declarations, Bylaws and Rules and*  
8 *Regulations of the Great Bay Condominium*  
9 *as the same may be amended from time to*  
10 *time.*

11 **Q.** All right. Thank you.

12 And could we look at the next  
13 page under Article 4, "Powers".

14 All right. And could you read,  
15 Mr. Doyle, for the benefit of the Court  
16 the paragraph that describes the  
17 Association's powers.

18 **A.** Yes. "The Association shall  
19 have all powers which an association of  
20 condominium owners is entitled under the  
21 laws of the Virgin Islands of the United  
22 States including specifically Title 28  
23 Virgin Island Code Chapter 33 and shall  
24 specifically have the power to acquire,  
25 own and convey real and personal property,

**Direct - Mr. Doyle**

1 to make and collect assessments against  
2 members to defray the expenses of the  
3 corporation in administering the affairs  
4 of the Condominium, enforcing the  
5 Declaration and to use the proceeds of the  
6 assessments in carrying the objects and  
7 purposes for which the Association is  
8 formed."

9 **Q.** Thank you. And you've  
10 explained previously that the declarations  
11 required the suite owners to pay the cost  
12 and expenses of CU-1?

13 **A.** Yes.

14 **ATTORNEY WENTZEL:** All right.  
15 And if -- could we show the witness, Your  
16 Honor, Plaintiff's Exhibit 6?

17 **THE COURT:** Yes.

18 **(Plaintiff's Exhibit 6 shared.)**

19 **BY ATTORNEY WENTZEL:**

20 **Q.** Mr. Doyle, can you identify  
21 Plaintiff's Exhibit 6.

22 **A.** These are the Bylaws for the  
23 Great Bay Condominium Association as filed  
24 with the official records of St. Thomas.

25 **Q.** And is this one of the

Direct - Mr. Doyle

1 governing documents for the Condominium  
2 Property?

3 **A.** Yes, it is.

4 ATTORNEY WENTZEL: All right.  
5 I would move Plaintiff's Exhibit 6 into  
6 evidence, Your Honor.

7 THE COURT: Is there any  
8 objection?

9 ATTORNEY TANKENSON HODGE: No  
10 objection, Your Honor.

11 THE COURT: Okay. Very well.  
12 Plaintiff's Exhibit 6, the Bylaws for  
13 GBCOA is admitted.

14 **(Plaintiff's Exhibit 6 admitted.)**

15 ATTORNEY WENTZEL: All right.  
16 And can we turn to Article 3, which is  
17 near the bottom of page two to orient the  
18 Court.

19 And this is the article  
20 addressing the "Board of Directors" for  
21 GBCOA of which you're a member; correct?

22 **A.** Yes.

23 **Q.** And we could look at the next  
24 page, section four, *General Duties and*  
25 *Powers of the Directors*. Would you read

Direct - Mr. Doyle

1 that for the benefit of the Court.

2 **A.** Sure. *The Board of Directors*  
3 *shall be responsible for the affairs of*  
4 *the Association and shall have all the*  
5 *powers and duties necessary for the*  
6 *administration of the Association's*  
7 *affairs, and as provided by law, may do*  
8 *all acts and things as are not*  
9 *inconsistent with the Declaration, the*  
10 *Articles of Incorporation, or Bylaws or*  
11 *directly thereby to be done and exercised*  
12 *exclusively by the Members. These powers*  
13 *and duties include the power to adopt*  
14 *rules and regulations deem necessary and*  
15 *to impose sanctions for violations*  
16 *thereof, including, without limitations,*  
17 *finances which may be collected as provided*  
18 *in the Declaration and the Articles of*  
19 *Incorporation, and to carry out and*  
20 *perform the other obligations and*  
21 *responsibilities imposed on the*  
22 *Association under the said Declaration.*

23 **Q.** All right. And are these  
24 provisions about the powers of the board  
25 of directors to enforce the Declaration

**Direct - Mr. Doyle**

1 and to do all things to assess for the  
2 common expenses? Is this the basis for  
3 your right to invoice the unpaid CU-1  
4 assessments?

5 **A.** Yes, this is the basis for the  
6 -- our rights to do it and our duty to do  
7 it properly.

8 **Q.** All right. And the Management  
9 Company, are they the ones that have power  
10 under this to do these things?

11 **A.** No, this is -- the Management  
12 Company has a management contract with us,  
13 this is on an obligation on the board --  
14 fiduciary obligation for the board.

15 **Q.** All right. Did the Developer  
16 who drafted the Declarations pay the  
17 assessments without objection that are the  
18 subject of NA's motion?

19 **A.** The Developer paid their  
20 obligation under the -- for the CU-1 bill  
21 with the only caveat is they requested a  
22 --

23 ATTORNEY TANKENSON HODGE:  
24 Objection. Objection.

25 THE COURT: Sustained.

Direct - Mr. Doyle

1 Sustained.

2 **BY ATTORNEY WENTZEL:**

3 Q. Okay, without including any  
4 other request, could you answer as to  
5 whether they timely paid?

6 A. They paid their -- they paid  
7 the bill rendered.

8 Q. All right. And did they  
9 object at all?

10 ATTORNEY TANKENSON HODGE:  
11 Objection.

12 THE COURT: Overrule.

13 THE WITNESS: They objected  
14 to paying late fees.

15 Q. Okay. Did GBCOA ever formed  
16 an intention in connection with these  
17 assessments to lock-out any suite owners  
18 from their units if they did not pay the  
19 assessments within 30 days?

20 ATTORNEY TANKENSON HODGE: I  
21 need to respectfully ask that that  
22 question be repeated. I don't think I  
23 heard it clearly and it's important that I  
24 do hear it clearly.

25 THE COURT: Okay.

Direct - Mr. Doyle

1 Repeat the question, Attorney  
2 Wentzel, please.

3 **BY ATTORNEY WENTZEL:**

4 **Q.** Has the GBCOA board of  
5 directors ever formed an intention to  
6 lock-out any of the suite owners from  
7 their units if they did not pay the CU-1  
8 assessments within 30 days?

9 ATTORNEY TANKENSON HODGE:  
10 So, I object to the question on the  
11 grounds that I don't think this witness  
12 can tell us whether the board has formed  
13 an intention to do something. He can  
14 testify about whether he has formed an  
15 intention. He may be allowed to testify  
16 about whether they've had a discussion,  
17 but I don't think he can testify about the  
18 intention of an organization.

19 ATTORNEY WENTZEL: But he's a  
20 member, Your Honor -- this is rather rich  
21 that yesterday the contentions and  
22 arguments were, we were gonna lock them  
23 out, we were gonna lock them out, based on  
24 obscure references in the documents that  
25 don't apply to these assessments. Now we



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1 have a member of the board who was in the  
2 discussions, he testified to it, he did  
3 the analysis about who owns these moneys,  
4 he was involved in the decision, he has --

5 THE COURT: Overrule.

6 THE WITNESS: I can speak,  
7 right, Your Honor?

8 THE COURT: Yes.

9 THE WITNESS: The board had  
10 definitely decided that we had no  
11 intention to lock-out any suite owner for  
12 failure to pay the CU-1 assessment, nor  
13 would we lien any suite owner for failure  
14 to pay their CU-1 assessment. That  
15 decision was made well before the bills  
16 were sent out.

17 Q. And was that the decision --  
18 did everyone on the board of directors  
19 agree with that?

20 A. Yes.

21 Q. And was a unanimous written  
22 consent drafted -- well, let me backup.  
23 On the issue of whether you would lock-out  
24 and/or lien any suite owners, did you  
25 consult with counsel about that?

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1           **A.** Yes.

2           **Q.** And did you have the benefit  
3 of counsel's advice when you made that  
4 decision?

5           **A.** Yes.

6           **Q.** What decisions did the GBCOA  
7 board of directors make in terms of what  
8 enforcement action they may take if people  
9 didn't pay the assessments on time?

10          **A.** GBCOA board had decided that  
11 if somebody did not pay their assessment  
12 on time, we would first evaluate the  
13 situation, but we would then move forward  
14 for a suit of money damages.

15                   THE COURT: So was this in  
16 writing? Is this in the minutes? Was  
17 this decision reduced to writing in the  
18 minutes of your meeting?

19                   THE WITNESS: I don't know,  
20 Your Honor. And if they were that -- the  
21 meeting at which this would have been  
22 discussed, the minutes have not yet been  
23 approved because we haven't had -- I don't  
24 think we've had another board meeting.

25                   THE COURT: So you're

**Direct - Mr. Doyle**

1 speaking on behalf of the entire board or  
2 was it five other --

3 THE WITNESS: Five members.

4 THE COURT: I'm sorry?

5 THE WITNESS: Five members,  
6 Your Honor.

7 THE COURT: Five members,  
8 including yourself?

9 THE WITNESS: Yes, Your  
10 Honor.

11 THE COURT: Okay, Attorney  
12 Wentzel.

13 **BY ATTORNEY WENTZEL:**

14 Q. All right. And is that the  
15 remedy that you also seek against NA in  
16 the other lawsuit?

17 ATTORNEY TANKENSON HODGE:  
18 Respectfully, I object to the question in  
19 its presence form in so far as it implies  
20 there's only one remedy sought.

21 ATTORNEY WENTZEL: I'll  
22 rephrase it.

23 Is that one of the remedies that  
24 GBCOA seeks against The Neighborhood  
25 Association in that separate lawsuit?

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1           **A.** Yes.

2           **Q.** Did the GBCOA have the ability  
3 to lock suite owners out of their units if  
4 they didn't pay these assessments?

5           **A.** No.

6           **Q.** Why not?

7           **A.** We don't have any access to  
8 the reservation systems. We -- Marriott  
9 Vacation Club told us they would not bill  
10 the suite owners, and we concluded they  
11 would -- even if we wanted them to, which  
12 we didn't, they wouldn't lock them out.

13                   ATTORNEY TANKENSON HODGE:  
14 So, respectfully, I think I need to move  
15 to strike that, that returned to the  
16 hearsay that we objected to before.

17                   ATTORNEY WENTZEL: It's  
18 offered for the effect on the hearer.

19                   ATTORNEY TANKENSON HODGE:  
20 Yeah, that's --

21                   THE COURT: Sustained.  
22 Sustained.

23 **BY ATTORNEY WENTZEL:**

24           **Q.** Okay. If you had wanted to  
25 implement a lock-out policy on these CU-1

**Direct - Mr. Doyle**

1 assessments, who would you have approached  
2 to do that?

3 **A.** We would have approached  
4 either Marsha Leighton-Herman, or Stacey  
5 Jackson-Rauso.

6 **Q.** All right. Did you in fact  
7 ever approached either of those  
8 individuals about locking out any of the  
9 suite owners if they didn't pay these  
10 assessments?

11 **A.** No, we did not have any  
12 discussions.

13 **Q.** Did the GBCOA ever formed any  
14 intention to rent out any suite owner's  
15 units if the CU-1 assessments were not  
16 paid in 30 days?

17 **A.** No, we had no intention of  
18 renting any person's unit.

19 **Q.** Have you read the affidavit of  
20 Abbey Chung in this case?

21 **A.** Yes, I have, and I have it  
22 here.

23 **Q.** I don't want to ask you about  
24 what she says, but I do want to ask you  
25 about the facts in your -- your own

**Direct - Mr. Doyle**

1 knowledge of the facts that are addressed  
2 in that affidavit.

3 May I show the witness  
4 Plaintiff's Exhibit 2, Your Honor?

5 ATTORNEY TANKENSON HODGE:  
6 So, I want to respectfully object to this.  
7 Miss Chung has filed an affidavit in  
8 connection with this motion, her testimony  
9 is scheduled for December 13th  
10 specifically to accommodate her. I think  
11 showing her this affidavit to this witness  
12 and having him go through the same thing  
13 is completely improper.

14 THE COURT: Sustained. You  
15 can ask him questions but you cannot show  
16 it to him, and -- it's the same thing as  
17 trying to get the hearsay in from Miss  
18 Chung and she has not testified.

19 **BY ATTORNEY WENTZEL:**

20 Q. Okay. Are you aware of a  
21 letter that was written to the NA board of  
22 directors by outside legal counsel for  
23 Marriott?

24 ATTORNEY TANKENSON HODGE:  
25 Respectfully we object to this, Your

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1 Honor. This letter which was attached to,  
2 I believe, it was attached to Mr.  
3 Wentzel's affidavit, but perhaps it was  
4 Miss Chung, is from a person who is,  
5 number one, not sworn, not present to  
6 testify, an attorney who doesn't represent  
7 any party in these proceedings, and this  
8 is an effort to introduce the opinion of a  
9 non-witness hearsay opining party who is  
10 not before you and whose opinion, whatever  
11 it may be, is not admissible or relevant  
12 to these proceedings.

13 ATTORNEY WENTZEL: I'm gonna  
14 offer his testimony about it to  
15 demonstrate the effect on the hearer, not  
16 for the truth, and as a basis for their  
17 expectations about whether the Developer  
18 and Marriott would paid.

19 ATTORNEY TANKENSON HODGE:  
20 So, I'm gonna object --

21 THE COURT: Let him speak.

22 ATTORNEY WENTZEL: And  
23 yesterday Your Honor admitted a letter  
24 from a lawyer, and allowed her to ask her  
25 witness all about her own statements in a

Direct - Mr. Doyle

1 letter. Now --

2 THE COURT: Who is this  
3 letter from that you're referring to,  
4 Attorney Wentzel?

5 ATTORNEY WENTZEL: I could  
6 have the witness testify to it, Your  
7 Honor.

8 THE COURT: No, but what's  
9 the name of the author of the letter?

10 ATTORNEY WENTZEL: The date  
11 of the letter is in 2019, September 19,  
12 2019 in the middle of the period covered  
13 by these assessments.

14 ATTORNEY TANKENSON HODGE:  
15 So, Your Honor, among the reasons --

16 THE COURT: What's the name  
17 of the person who wrote the letter?

18 ATTORNEY WENTZEL: Margaret  
19 Rolando.

20 THE COURT: And is it an  
21 exhibit that I have attached to your --

22 ATTORNEY WENTZEL: Yes. Yes,  
23 Your Honor. It's Plaintiff's Exhibit 1-A.

24 THE COURT: 1-A. Okay.

25 ATTORNEY TANKENSON HODGE:



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1 And to be clear, Your Honor, this could  
2 not be something that the witness is going  
3 to claim they took into account in  
4 deciding whether or not they were going to  
5 do this, because Miss Chung's affidavit  
6 says they were surprised to learn of this  
7 later. It is --

8 ATTORNEY WENTZEL: I find it  
9 shocking that counsel --

10 ATTORNEY TANKENSON HODGE:  
11 Excuse me, if I could just finish my  
12 objection.

13 THE COURT: Just one person  
14 at a time. Attorney Hodge.

15 ATTORNEY TANKENSON HODGE:  
16 Yes. So it is clearly hearsay. It does  
17 not matter -- the so called effect on the  
18 hearer is also irrelevant because the  
19 claim of Great Bay is, that they were  
20 surprised to learn about this in their  
21 discovery, it cannot possibly be relevant  
22 to these proceedings, and it's highly  
23 prejudicial hearsay because this attorney  
24 who is not before you, who is not a member  
25 of the V.I. Bar, who is not under oath is

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1 going to have an opinion apparently slip  
2 in as if it were relevant to these  
3 proceedings when it can't possibly be.

4 ATTORNEY WENTZEL: It's not  
5 gonna be offered for the truth of what the  
6 letter says, Your Honor. It is going to  
7 be offered for the effect on GBCOA and its  
8 expectation about whether the 59 percent  
9 owner would pay, and that is relevant to  
10 lock-out and were they gonna lock-out.

11 Yesterday there was nothing but  
12 testimony, including in a letter from NA's  
13 counsel that was admitted into evidence,  
14 and extensive testimony by Mr. Cutrona  
15 about her letter to suggest that we were  
16 gonna lock them out but we just -- we  
17 couldn't get to it because they got a TRO.  
18 I'm entitled to introduce evidence to  
19 refute that, to controvert it. And one of  
20 the controverting basis already in the  
21 record before the Court is Mr. Doyle's  
22 testimony that they expected this 59  
23 percent owner to pay. And this letter  
24 he's identified as one of the reasons for  
25 his expectation.

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1 THE COURT: Okay, just one  
2 minute. I found the letter. Just hold  
3 on.

4 **(Brief pause in record.)**

5 ATTORNEY TANKENSON HODGE:  
6 Further, Your Honor, by the way about this  
7 letter, it was not concerning these  
8 assessments, it was a letter written  
9 related to a proposal to dissolve --

10 THE COURT: I see that, the  
11 company. I see that.

12 So which part of this letter,  
13 Attorney Wentzel, are you going to refer  
14 to, because it seems to be something quite  
15 -- it's speaking -- is dated September  
16 19th and it's referring to the support of  
17 the members of the company in connection  
18 with a dissolution of the company.

19 ATTORNEY WENTZEL: And the  
20 company is The Neighborhood Association,  
21 Your Honor.

22 ATTORNEY TANKENSON HODGE:  
23 Correct. But the point is their lawyer --

24 ATTORNEY WENTZEL: This is a  
25 member -- this is a -- the lawyer for a 59

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1 percent member of The Neighborhood  
2 Association.

3 ATTORNEY TANKENSON HODGE:  
4 This is an attorney --

5 ATTORNEY WENTZEL: And the  
6 part I want to ask the witness about is on  
7 page two.

8 THE COURT: Okay. So what  
9 section --

10 ATTORNEY WENTZEL: Paragraph  
11 two.

12 THE COURT: Paragraph two?  
13 Obligations of suite owners not eliminated  
14 by dissolution?

15 ATTORNEY WENTZEL: Right.

16 ATTORNEY TANKENSON HODGE: So  
17 clearly, Your Honor, the effort here is to  
18 have the opinion of a lawyer, not admitted  
19 in the Virgin Islands, not under oath, on  
20 the very issue which the Great Bay is  
21 attempting to pursue, put into evidence as  
22 if this witness was before us to be  
23 cross-examined about this opinion. They  
24 are trying to bootstrap their position  
25 with an opinion of a lawyer who is not

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1 admitted in the Virgin Islands, not  
2 representing a party in these proceedings,  
3 not here to be cross-examined about the  
4 basis or validity of her opinion. Her  
5 opinion cannot be admitted without  
6 violating hearsay rules, judge, because it  
7 clearly is being offered for the truth of  
8 the matter asserted. And in contrast, the  
9 reference to my letter to Great Bay  
10 yesterday was not about the truth of the  
11 matter asserted, it was to show that a  
12 demand was made by Neighborhood  
13 Association on Great Bay about rescinding  
14 these invoices, referring to the fact that  
15 Neighborhood Association understood this  
16 to be a threat of eviction. That was  
17 clearly not hearsay. This clearly is  
18 hearsay. It's about as fundamentally  
19 hearsay as one could imagine. And we  
20 would be highly prejudiced by allowing  
21 this lawyer's opinion to be put in  
22 evidence.

23 THE COURT: But isn't it  
24 based upon -- isn't it about Mr. Doyle or  
25 the board of directors understanding and

1 their conclusions based upon what was  
2 stated to them through this letter?

3 ATTORNEY TANKENSON HODGE: So  
4 -- but, no, Your Honor, this isn't what --  
5 anything that was stated to them. This  
6 isn't a letter --

7 ATTORNEY WENTZEL: Sure it  
8 was. It was produced by NA --

9 THE COURT: One person at a  
10 time, Attorney Wentzel, you'll have an  
11 opportunity. No, you'll have an  
12 opportunity.

13 ATTORNEY WENTZEL: I  
14 apologize. I apologize.

15 ATTORNEY TANKENSON HODGE: It  
16 is not an opinion that was given to Great  
17 Bay, Your Honor, it is a letter that was  
18 written to The Neighborhood Association  
19 years ago by an attorney retained by a  
20 non-party to these proceedings to offer an  
21 opinion that she apparently gave in  
22 connection with the proposed dissolution  
23 of The Neighborhood Association. So, it's  
24 not an opinion that was given to Great  
25 Bay, it is an opinion that Great Bay

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1 claims they came into possession of by  
2 discovery in the other case. So, it  
3 wasn't an opinion given to them, it wasn't  
4 anything given to them as basis for them  
5 to rely on, and it's certainly the most  
6 fundamental kind of hearsay, and there's  
7 no way that Neighborhood Association can  
8 be protected on this, because we can't  
9 cross-examine this lawyer about the basis  
10 or merits of her opinion. It's just  
11 bootstrapping her opinion in here where it  
12 doesn't belong. She is not a member of  
13 the V.I. Bar, she doesn't represent a  
14 party in this case, and we can't  
15 cross-examine her.

16 THE COURT: Okay. All right.  
17 Thank you, Attorney Hodge.

18 Attorney Wentzel.

19 ATTORNEY WENTZEL: Your  
20 Honor, Attorney Hodge's statement that the  
21 Neighbor- -- that the Marriott Vacation  
22 Trust Owners Association is not a party to  
23 this case is gas lighting. They are here  
24 to ask the Court to enjoin on behalf of  
25 all their members, these assessments. And

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1 the Marriott Vacation Trust Owners  
2 Association it's established, is a 59  
3 percent member. It's their biggest member  
4 and almost half. And moreover, when  
5 Attorney Hodge says it's gonna be offered  
6 --

7 THE COURT: Yeah, but she is  
8 not speaking -- well, they've already paid  
9 and the only objection was to the late  
10 fee.

11 ATTORNEY WENTZEL: Right,  
12 Your Honor, I am only offering --

13 THE COURT: So the argument  
14 here with respect to the other 51 percent  
15 that is having an issue in terms of  
16 paying.

17 ATTORNEY WENTZEL: No, no,  
18 Your Honor, I'm not offering this to have  
19 anything to do with the other 51 percent.  
20 I'm offering it to ask --

21 THE COURT: Wouldn't Mr.  
22 Cutrona be a part of the 51 percent that  
23 is objecting to pay?

24 ATTORNEY TANKENSON HODGE:  
25 Yes.



Direct - Mr. Doyle

1 THE COURT: Yes, so I'm lost,  
2 Attorney Wentzel. Okay, just give me one  
3 second to digest this.

4 ATTORNEY WENTZEL: All right.

5 ATTORNEY TANKENSON HODGE:  
6 Can I point out one more thing, judge? In  
7 Miss Chung's affidavit, which was filed  
8 just on November -- since our TRO, she  
9 says, I was recently made aware of the  
10 letter from Margaret Rolando, which she  
11 attaches. And she says, that her position  
12 was never discussed with any member of the  
13 GBCOA board. So this is clearly not the  
14 basis on which a decision was made, if one  
15 was made, as Mr. Doyle claims about  
16 whether or not to lock people out.

17 ATTORNEY WENTZEL: Mr. Doyle  
18 can testify exactly when he found this  
19 letter, when the GBCOA board discovered  
20 this letter. He will testify that it was  
21 before the bills for the CU-1 assessments  
22 that are at issue in this case were even  
23 sent out. And when NA produced this, you  
24 can see the bates numbers on the bottom.  
25 This is a document NA produced in that

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1 case, those matters are of record, and I  
2 had said at the outset, these issues they  
3 chose to bring these issues in this case.  
4 And now they want to say, well, we don't  
5 know about when this document was  
6 produced. Mr. Doyle can tell Your Honor  
7 when it was produced. They'll tell you it  
8 was produced before they even sent the  
9 bills out, and he'll tell you it was a big  
10 part of their expectation that the 49  
11 percent would pay, and when the 49 percent  
12 paid so would the rest. And that's why  
13 they had no plan or design or intent to  
14 lock anyone out.

15 THE COURT: Okay, just one --

16 ATTORNEY TANKENSON HODGE:

17 Even if that's the case, Your Honor, the  
18 letter itself should not come in to  
19 evidence.

20 THE COURT: Just one minute,  
21 please.

22 **(Brief pause in the record.)**

23 Okay. And so, Attorney Wentzel,  
24 what is it that you intend to elicit  
25 directly from Mr. Doyle as it relates to

Direct - Mr. Doyle

1 Section 2?

2 ATTORNEY WENTZEL: That he  
3 received and read that part of the letter  
4 before the bills that are the subject of  
5 this motion were sent out, and that it  
6 forms part of the basis -- he already  
7 testified to some of the basis why they  
8 expected it to be paid. And that's 'cause  
9 the declarations are clear. Now this  
10 formed another part of their expectation  
11 it would be paid, and it formed a part of  
12 their decision that they weren't going to  
13 have to lock anyone out, and that they  
14 expected everyone would pay.

15 THE COURT: Well -- okay.

16 ATTORNEY WENTZEL: His  
17 expectations --

18 THE COURT: Well, I'm not  
19 sure about the lock-out issue, but I  
20 understand everything else you said. So,  
21 the letter itself will not be admitted  
22 into evidence, but you can have him  
23 testify based upon his knowledge or his  
24 understanding of this letter.

25 **BY ATTORNEY WENTZEL:**

Direct - Mr. Doyle

1           **Q.** All right. Mr. Doyle, how did  
2 GBCOA and, you personally, come to have  
3 this letter?

4           **A.** We received -- this letter was  
5 found buried in a stack of 5,000 documents  
6 in the other NA case.

7           **Q.** And when did you become aware  
8 of and receive a copy of this letter?

9           **A.** I thought I received it on  
10 October 10th or October 11th.

11           **Q.** And what was --

12                   THE COURT: Of what year?

13                   THE WITNESS: Your Honor,  
14 this year.

15                   THE COURT: Oh.

16           **Q.** All right.

17           **A.** Literally ten days before the  
18 bills were issued.

19           **Q.** Okay. And what if  
20 significance did this letter have and any  
21 expectation that you and the GBCOA board  
22 formed about whether or not these  
23 assessments would be paid?

24           **A.** It increased our confidence  
25 dramatically that the Trust Owners

**Direct - Mr. Doyle**

1 Association would pay their bill because  
2 their counsel had basically written this  
3 letter that said that the obligation to  
4 pay the bill travels with the dirt, and  
5 that they are gonna owe on CU-1  
6 irrespective of what happens with the  
7 deed; we felt very confident.

8 ATTORNEY WENTZEL: All right.  
9 That's all I wanted to ask him, Your  
10 Honor.

11 THE COURT: Okay. All right.  
12 Your next question. Is there -- or are  
13 you finished?

14 ATTORNEY WENTZEL: I might  
15 have -- let me just reorient, Your Honor,  
16 to where I was.

17 THE COURT: Sure.

18 **BY ATTORNEY WENTZEL:**

19 **Q.** And, Mr. Doyle, do you know  
20 who Richard Hayward is?

21 **A.** He is an officer of Marriott  
22 Vacation Worldwide and is the senior  
23 person who faces off against the Great Bay  
24 Condominium Association in St. Thomas.

25 **Q.** All right. And you mentioned

**Direct - Mr. Doyle**

1 that the Marriott Vacation Owners  
2 Association, the Member of NA, paid the  
3 bill; correct?

4 **A.** Yes.

5 **Q.** And was it Mr. Hayward that  
6 remitted the payment to GBCOA with this  
7 letter?

8 **A.** Yes.

9 **Q.** I'm gonna ask you about the  
10 TRO that was entered in this case. Did  
11 the entry of this injunction for the  
12 temporary restraining order saying you had  
13 to rescind the bills, did that -- for 14  
14 days, did that have any affect on the  
15 GBCOA board of directors ability to manage  
16 and administer the condo property?

17 **A.** It had a tremendously negative  
18 effect on the board and our ability to  
19 manage the property.

20 **Q.** Can you explain that to the  
21 Court, please?

22 **A.** The board relies on the fact  
23 that when it issues an assessment the  
24 member if they have a problem with the  
25 assessment will pay the assessment and

**Direct - Mr. Doyle**

1 then will have a dispute. The order  
2 stopped those assessments dead in their  
3 tracks. And in addition, The Neighborhood  
4 Association took the order and sent it out  
5 to all the members, waving it around, and  
6 that order written by Miss Hodge included  
7 language that basically said, that we did  
8 something unlawful and illegal. And I  
9 took great offense to that because I've  
10 sat here now for two days and I've heard  
11 nothing that was unlawful or illegal and  
12 yet that's in the order that --

13 THE COURT: Okay, that's  
14 neither here nor there, Mr. Doyle.

15 Next question.

16 **BY ATTORNEY WENTZEL:**

17 Q. And would you expect The  
18 Neighborhood Association to do the same if  
19 a preliminary injunction was entered?

20 ATTORNEY TANKENSON HODGE:  
21 Objection. Speculation.

22 THE COURT: Sustained.

23 ATTORNEY WENTZEL: Your  
24 Honor, could I have just a minute to  
25 consult with Mr. Wilczynski?

Cross - Mr. Doyle

1 THE COURT: Yes. Of course.  
2 Five minutes.

3 ATTORNEY WENTZEL: Thank you.

4 THE COURT: Thank you.

5 **(Brief pause in record.)**

6 Attorney Wentzel?

7 ATTORNEY WENTZEL: Thank you,  
8 Your Honor. I'll pass the witness.

9 THE COURT: Okay. Very well.  
10 Thank you.

11 Attorney Hodge.

12 ATTORNEY TANKENSON HODGE:  
13 Yes, Your Honor, if I could have just one  
14 moment to move an exhibit.

15 THE COURT: Sure.

16 ATTORNEY TANKENSON HODGE:  
17 Thank you.

18 **CROSS-EXAMINATION**

19 **BY ATTORNEY TANKENSON HODGE:**

20 Q. Good afternoon, Mr. Doyle, can  
21 you hear me?

22 A. Yes.

23 Q. Okay. So I understand from  
24 your testimony and your affidavit that you  
25 were the president of Great Bay



**Cross - Mr. Doyle**

1 Condominium Association from 2010 to 2019,  
2 is that right?

3 **A.** No.

4 **Q.** No? Isn't that what you said  
5 in your affidavit?

6 **A.** I didn't sign -- I didn't fill  
7 out an affidavit.

8 **Q.** Oh, that's John Doyle. Sorry,  
9 you have two Doyles in your association?

10 **A.** Yes.

11 **Q.** John Doyle was the president  
12 from 2010 to 2019. Can you tell me how  
13 long you've been a member of the Great Bay  
14 board?

15 **A.** I believe I've been a member  
16 11 years.

17 **Q.** So you were a member of the  
18 board in 2017, is that right?

19 **A.** Correct.

20 **Q.** And you're aware that  
21 Neighborhood Association executed and  
22 delivered a deed to the CU-1 unit to Great  
23 Bay Condominium Association in September  
24 2017; correct?

25 **A.** Yes.

1           **Q.** And you are aware that that  
2 deed was subsequently recorded in the  
3 office of the Virgin Islands Recorder of  
4 Deeds; correct?

5           **A.** Yes.

6           ATTORNEY WENTZEL: Objection  
7 that this is beyond the scope, Your Honor,  
8 I didn't ask this witness any questions  
9 about NA's deed.

10           ATTORNEY TANKENSON HODGE: He  
11 didn't ask about the deed, Your Honor, but  
12 he did ask --

13           THE COURT: Overrule.

14           ATTORNEY TANKENSON HODGE:  
15 Thank you. May we have permission to show  
16 this witness Defendant's Exhibit U?

17           THE COURT: Yes.

18           **(Defendant's Exhibit U shared.)**

19           ATTORNEY TANKENSON HODGE: Is  
20 that appearing on the screen now, the  
21 condominium deed?

22           THE COURT: Yes.

23           **BY ATTORNEY TANKENSON HODGE:**

24           **Q.** Mr. Doyle, can you see the  
25 document on the screen in front of you who

Cross - Mr. Doyle

1 starts with the title Condominium Deed?

2 **A.** Yes.

3 **Q.** This has been marked -- this  
4 is Defendant's Exhibit U. Do you  
5 recognize it to be the recorded deed from  
6 Neighborhood Association, Inc. to Great  
7 Bay Condominium Association, Inc. for the  
8 CU-1 unit?

9 **A.** I've never seen this deed  
10 before. I see this now.

11 **Q.** Is that right?

12 **A.** But I also --

13 **Q.** Sorry, go ahead.

14 **A.** But I also understand that  
15 this was dated -- the deed's dated the  
16 20th of September, it's recorded on the  
17 6th of -- I mean, March 6th of 2018.

18 **Q.** Correct.

19 **A.** The day this was signed was  
20 the day Maria hit St. Thomas, and so --

21 **Q.** Okay. Sir, excuse me, try not  
22 to go away from the questions I'm asking  
23 you. Are you testifying you never seen  
24 the deed before?

25 **A.** I don't think I've seen this.

Cross - Mr. Doyle

1           **Q.** So you were doing all your  
2 investigating that was described in your  
3 testimony with Mr. Wentzel about how to  
4 figure out about who would owe the common  
5 charges or the maintenance fees for CU-1,  
6 you never looked at this deed?

7           **A.** No. The deed didn't make --  
8 the deed wasn't germane to my analysis.

9                   ATTORNEY TANKENSON HODGE: So  
10 -- Your Honor, I would like to move the  
11 admission of Defendant's Exhibit U in  
12 evidence.

13                   THE COURT: Any objections,  
14 Attorney Wentzel?

15                   ATTORNEY WENTZEL: I do  
16 object, Your Honor, I think it's beyond  
17 the scope; this should have been done in  
18 their case in chief.

19                   ATTORNEY TANKENSON HODGE:  
20 So, I think it's proper cross and I  
21 certainly gonna represent to the Court  
22 that I will tie up with the witness in  
23 connection with his testimony about other  
24 exhibits why the deed -- the recorded deed  
25 is relevant.

Cross - Mr. Doyle

1 THE COURT: Your objection is  
2 overruled. The Condominium Deed -- what  
3 exhibit is this -- Exhibit U is admitted,  
4 Defense Exhibit U.

5 **(Defendant's Exhibit U admitted.)**

6 ATTORNEY TANKENSON HODGE:  
7 Thank you. So --

8 THE COURT: I'm confused.  
9 I'm confused by the fact that the board  
10 meets or should meet annually based upon  
11 their -- what I saw on the other exhibits,  
12 and from 2018 to 2021 a member of the  
13 board of directors is saying he's never  
14 seen the deed.

15 ATTORNEY TANKENSON HODGE:  
16 Yeah, agree. It's surprising to me as  
17 well, particularly since he saw the letter  
18 from Mr. Rolando buried in 5,000 pages of  
19 documents produced in discovery,  
20 understand from the other case. It does  
21 seem like something he should have seen.

22 ATTORNEY WENTZEL: He  
23 explained it, Your Honor. It's because  
24 this is the one they recorded five months  
25 later. That's not the one that was

1 stamped.

2 ATTORNEY TANKENSON HODGE:

3 No, that would not be a reason --

4 THE COURT: No, no, that's  
5 not it, Attorney Wentzel, it still doesn't  
6 add up, especially if they are meeting  
7 regularly.

8 ATTORNEY WILCZYNSKI: Your  
9 Honor, may I make one comment here?

10 THE COURT: Yes.

11 ATTORNEY TANKENSON HODGE: I  
12 don't think we should have the lawyers  
13 explaining why the witness hasn't seen it.

14 ATTORNEY WILCZYNSKI: Your  
15 Honor, unfortunately Attorney Hodge spent  
16 a lot of time explaining why this is  
17 relevant. The problem is, that this is  
18 not the deed that was delivered to Abbey  
19 Chung. That's not the deed and that's  
20 what the problem is with Attorney Hodge's  
21 statements.

22 THE COURT: Okay. All right.  
23 Attorney Hodge, one second. So --  
24 Attorney Hodge, you can continue with your  
25 cross-examination, and I guess at some

Cross - Mr. Doyle

1 point I'll understand why this was not the  
2 deed delivered to Miss Chung, if, in fact,  
3 your representation is accurate, Attorney  
4 Wilczynski.

5 So, Attorney Hodge, you may  
6 continue.

7 **BY ATTORNEY TANKENSON HODGE:**

8 **Q.** So, Mr. Doyle, what I want to  
9 ask you now about is basic questions about  
10 maintenance fees that relate to that there  
11 is documents you identify that you said  
12 were the basis for your conclusion about  
13 how you assess your ability to charge for  
14 the maintenance fees and common charges.  
15 So let me just start with this basic  
16 question, am I correct in understanding  
17 that in the various correspondence where  
18 you used the term maintenance fee or  
19 annual maintenance fee or members dues, or  
20 annual maintenance fees, all of those are  
21 the same basic concept of your way of  
22 passing along to your members the cost of  
23 operating these common areas?

24 **ATTORNEY WENTZEL:** Object to  
25 the form.

Cross - Mr. Doyle

1 THE COURT: Overrule. It's  
2 clear.

3 THE WITNESS: Yes.

4 **BY ATTORNEY TANKENSON HODGE:**

5 Q. So those are all nefarious  
6 names for common charges?

7 A. Yes.

8 Q. Now, were you involved with  
9 the board in the drafting of Exhibit B,  
10 which was the memorandum to Neighborhood  
11 Association members explaining the invoice  
12 for these five years of maintenance fees  
13 for CU-1?

14 A. I reviewed the document. I  
15 did -- was not involved in the drafting.

16 Q. Are you familiar with it?

17 A. If you put it up I'll look at  
18 it.

19 Q. Do you remember in reviewing  
20 it having had any reason to doubt what was  
21 in there?

22 A. No.

23 ATTORNEY TANKENSON HODGE:  
24 Your Honor, may we show the witness the  
25 Defendant's Exhibit B, "B" as in boy?



Cross - Mr. Doyle

1 THE COURT: Yes. That's the  
2 letter dated October 22nd?

3 ATTORNEY TANKENSON HODGE:  
4 Yes, judge.

5 **(Plaintiff's Exhibit B shared.)**

6 **BY ATTORNEY TANKENSON HODGE:**

7 **Q.** Okay, can you see Exhibit B,  
8 Mr. Doyle?

9 **A.** I could see part of it.

10 **Q.** Okay, me too. I'm trying to  
11 find a way to make the screen bigger. Can  
12 you see it now?

13 **A.** Yes.

14 **Q.** Okay. Very good. So, do you  
15 recognize this to be the memorandum that  
16 your association sent to The Neighborhood  
17 Association members to explain and justify  
18 your invoicing them for the maintenance  
19 fees for CU-1 for that five-year period,  
20 from 2017 to 2021?

21 **A.** It looks like it.

22 **Q.** And this -- let me let you  
23 scroll down. Do you need to see more of  
24 it to recognize it?

25 **A.** Yeah, just scroll slowly.

Cross - Mr. Doyle

1 Q. Okay. Sorry.

2 A. Yes, that looks like it.

3 Q. Okay. And does it bear your  
4 name on the last page as one of the  
5 authors or signatories?

6 A. It bears my name as one of the  
7 signatories.

8 Q. Okay. And so should we take  
9 it from that that you understood and  
10 approved the memo?

11 A. Yes.

12 Q. Okay. And again, just for  
13 clarity, we're on the first page where the  
14 memo refers to annual maintenance fee  
15 assessments, as I've understood from you  
16 those are the same as the common charges  
17 and --

18 A. Which line are you referring  
19 to?

20 Q. Second paragraph, first  
21 sentence.

22 A. Yes.

23 Q. The annual maintenance fee  
24 referenced there, that's the same as I've  
25 understood it from you is member's dues;

Cross - Mr. Doyle

1 correct?

2 **A.** Yes.

3 **Q.** And also the same as common  
4 charges?

5 **A.** Yes.

6 **Q.** Okay. Now on page three of  
7 this memo you have, you, meaning Great  
8 Bay, have said that "The Suites Owners'  
9 responsibility to pay all dues for CU-1  
10 are not tied to ownership of the Deed for  
11 CU-1."

12 **A.** Yes.

13 **Q.** That's your position? That's  
14 the same as saying, their obligation --  
15 the NA members' responsibility to pay  
16 annual assessments for CU-1 is not tied to  
17 ownership, that's the same meaning?

18 **A.** What it means is what I  
19 testified to earlier, that all the cost  
20 and expenses of CU-1 are the  
21 responsibility of the Owners of Two  
22 Bedroom Suites.

23 **Q.** But again, what you're calling  
24 all the expenses, that's the same as  
25 annual assessments for CU-1, the annual

**Cross - Mr. Doyle**

1 maintenance fees for CU-1, all of that is  
2 included in what you're saying that NA  
3 members have the responsibility to pay for  
4 CU-1 unrelated to who owns the deed to  
5 CU-1; is that right?

6 **A.** Right. Correct.

7 **Q.** Okay. And so, you said that  
8 in part your authority for this position  
9 was under your articles and your bylaws  
10 and so on, but I just want to make sure I  
11 understand the substance of what you're  
12 saying to the Neighborhood Association  
13 members.

14 Your position, by yours I mean  
15 Great Bay's position is, that no matter  
16 who owns the CU-1 unit, today and 2018,  
17 next year, they will always be  
18 responsible, the NA members will always be  
19 responsible to pay the dues or annual  
20 assessments or maintenance fees for this  
21 unit, is that your position?

22 **A.** I -- yeah. I've always said  
23 that the Suite Owners are responsible  
24 based on the language in the Declaration  
25 and the amendments to the declaration.

Cross - Mr. Doyle

1           **Q.** Okay, but what I'm trying to  
2 make sure I understand --

3           THE COURT: You need to  
4 answer the specific question, Mr. Doyle.

5           THE WITNESS: Yes, Your  
6 Honor.

7           **BY ATTORNEY TANKENSON HODGE:**

8           **Q.** Do you understand, the  
9 question is are you saying that The  
10 Neighborhood Association members will be  
11 responsible for paying those dues, those  
12 maintenance fees, those annual assessments  
13 for this unit forever no matter who owns  
14 the unit?

15           **A.** Yes.

16           **Q.** And so, for example, if the  
17 Court determines in this case that Great  
18 Bay is the owner of CU-1, nevertheless,  
19 the members of NA that are not the owners  
20 and never were the owners will be  
21 responsible to pay those dues according to  
22 your interpretation?

23           **A.** It's according to my  
24 interpretation of the document.

25           **Q.** Yes. Exactly. According to

Cross - Mr. Doyle

1 your interpretation of the documents. Is  
2 that correct?

3 **A.** Yes.

4 **Q.** Okay. And so, just for a  
5 hypothetical to make sure we're really  
6 understanding this, not only if the Court  
7 determines that Great Bay owns the  
8 condominium -- the CU-1 now or next year  
9 or whenever the decision is made, but if  
10 you sell it to someone else, and the year  
11 after that, somebody rich, Bill Gates,  
12 still these members of NA are going to be  
13 responsible to pay for the maintenance  
14 fees and dues for that unit without regard  
15 to his ownership?

16 **A.** Yes, that's what the document  
17 say.

18 **Q.** That's what you say the  
19 document say?

20 ATTORNEY WILCZYNSKI:  
21 Objection, Your Honor. He's not an  
22 expert, and the hypothetical is  
23 inappropriate for use in these  
24 circumstances, and I move to strike his  
25 testimony on that subject.

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THE COURT: Overrule.

**BY ATTORNEY TANKENSON HODGE:**

**Q.** So I want to direct your attention now to page three of this letter. Page three of the letter which explains that Great Bay -- I want to find my exact wording here. Sorry. Just right here I want to focus your attention on this part of the letter where you're explaining the implications of this. It's not only that The Neighborhood Association members will remain responsible according to your interpretation no matter who owns it, but they will have the exclusive responsibility to pay all dues regardless of who owns it. Is that a correct understanding of your position as stated in this paragraph --

**A.** Which paragraph, which lines?

**Q.** Right here. This paragraph where the -- begins, "The Suites Owners' responsibility to pay all dues". Do you see that paragraph above on the left of the page? You see that last sentence there that begins -- where it says, *the*

Cross - Mr. Doyle

1 *Suites Owners are exclusively responsible*  
2 *to pay all dues relating to CU-1*  
3 *regardless who holds the deed to CU-1?*

4 **A.** Yes.

5 **Q.** That's your position?

6 **A.** That is my understanding of  
7 the documents.

8 **Q.** And moving along a little  
9 further on the document, you say the  
10 Articles of Incorporation of Great Bay  
11 Condominium Owners Association state in  
12 Article II(B), what the objects and  
13 purposes of the Association is formed, and  
14 that in Article 4 your powers are  
15 explained, and that they quote, *confer on*  
16 *GBCOA the power to make and collect*  
17 *assessments against members to defray the*  
18 *expenses of the corporation in*  
19 *administering the affairs of the*  
20 *corporation.*

21 THE COURT: Condominium.

22 ATTORNEY TANKENSON HODGE:

23 Right.

24 Is that a correct reading of  
25 your position there?



Cross - Mr. Doyle

1           **A.** Yes.

2           **Q.** Okay. So this was Plaintiff's  
3 Exhibit 5, it was shown to you today.  
4 Plaintiff's Exhibit 5 was your Articles of  
5 Incorporation. I'm gonna ask the Court's  
6 permission to let me put that up on the  
7 screen, if I may?

8           THE COURT: Yes. I'm sorry,  
9 you said Plaintiff Exhibit 5?

10           ATTORNEY TANKENSON HODGE:  
11 Yes, judge.

12           THE COURT: Okay. Yes.

13           **(Plaintiff's Exhibit 5 shared.)**

14           **BY ATTORNEY TANKENSON HODGE:**

15           **Q.** Can you see the document on  
16 the screen, Mr. Doyle, Exhibit 5?

17           **A.** I see Exhibit 5 but no -- now  
18 I see the Articles of Incorporation.

19           **Q.** Okay. And these are the  
20 Articles of Incorporation of -- oh, sorry.  
21 These are the Articles of Incorporation of  
22 Great Bay Condominium Association;  
23 correct?

24           **A.** Correct.

25           **Q.** And let's scroll down -- let's

**Cross - Mr. Doyle**

1 see. This -- your association is  
2 specifically formed according to the very  
3 first paragraph, under the provisions of  
4 Title 13 as a corporation, but your powers  
5 under "Objects and Purposes," Article 2,  
6 are pursuant to Title 28 of Virgin Islands  
7 Code Chapter 33. Do you know that to be  
8 the Condominium Act of the Virgin Islands?

9 **A.** I'm not sure what -- I mean, I  
10 don't -- couldn't swear to what Title 28  
11 of the Virgin Islands Code Chapter 33 is.

12 **Q.** So when you were doing your  
13 investigation to determine whether you had  
14 the authority to assess The Neighborhood  
15 Association members rather than the owners  
16 of the unit, you didn't look at Title 28  
17 Virgin Islands Code Chapter 33 to see  
18 what, if anything, it said about the power  
19 of a condominium to assess common charges?

20 **A.** No.

21 **Q.** So would you be surprised if I  
22 told you that Title 33 Virgin Islands -- I  
23 mean, Title 28 Virgin Islands Code Chapter  
24 33 specifies that, quote, "The common  
25 profits of the property", condominium

**Cross - Mr. Doyle**

1 property, "shall be distributed among, and  
2 the common expenses shall be charged to,  
3 the apartment owners according to the  
4 percentage of the undivided interest in  
5 the common areas and facilities." Close  
6 quote. Did you know that?

7 **A.** No.

8 **Q.** And in this case your position  
9 that the members of The Neighborhood  
10 Association are eternally responsible for  
11 the common charges for CU-1 is not  
12 consistent with the owner of the unit  
13 being responsible for those charges, is  
14 it?

15 **A.** I guess not. But not  
16 having seen --

17 **ATTORNEY WENTZEL:** Yeah, I  
18 object that -- if that she's asking the  
19 witness to draw a conclusion about what  
20 the Virgin Islands Condominium Act says,  
21 and she hasn't even put the language up of  
22 the Act. She is selectively quoting and  
23 asking this witness, a lay person, what  
24 the meaning of the Virgin Islands  
25 Condominium Act is, that's improper. I

Cross - Mr. Doyle

1 move to strike.

2 ATTORNEY TANKENSON HODGE:

3 I'm not asking him the meaning of  
4 anything. I'm asking him whether he  
5 looked at the code and the restrictions in  
6 the code when he did what he claimed was  
7 an investigation.

8 ATTORNEY WENTZEL: That you  
9 asked already. That's a different  
10 question.

11 THE COURT: Okay, one person  
12 at a time. That was the former question,  
13 the prior question.

14 ATTORNEY TANKENSON HODGE:  
15 So, the witness has testified that he did  
16 an investigation to determine whether it  
17 would be appropriate to assess the  
18 individual members of Neighborhood  
19 Association for the common charges for  
20 this unit as oppose to the owner of the  
21 unit. And he's testified that in his  
22 interpretation, eternally the members of  
23 Neighborhood Association will be  
24 responsible for those common charges. And  
25 I'm asking him now, on cross-examination,

Cross - Mr. Doyle

1 about the fact that his own Articles of  
2 Incorporation, which he identified in his  
3 direct testimony, specified that the  
4 powers of the Association are pursuant to  
5 Title 28 Virgin Islands Code Chapter 33,  
6 and whether he reviewed that or bother to  
7 familiarize himself with the limitations  
8 in that section, and he said he didn't.  
9 And now I'm asking him, specifically,  
10 about the language of Title 28 Virgin  
11 Islands Code Section 909, which is  
12 directly on point, and specifies that,  
13 common expenses are to be charged to  
14 apartment owners, and according to their  
15 percentage ownership interest in the  
16 common areas. That's --

17 ATTORNEY WENTZEL: Your Honor

18 --

19 THE COURT: What's the  
20 question with respect to that, with  
21 Section 909? What is the question to him  
22 with respect to 909, if is he familiar  
23 with it or what?

24 ATTORNEY TANKENSON HODGE:

25 Well, the first question was, is he

Cross - Mr. Doyle

1 familiar with it?

2 Are you familiar with that  
3 requirement in Section 909 of Title 28 in  
4 Chapter 33 of the Virgin Islands Code, Mr.  
5 Doyle?

6 ATTORNEY WENTZEL: Objection.  
7 That's a different question. It's not  
8 asking if he is familiar with title.  
9 She's asking is he familiar with certain  
10 specific language we can't see.

11 THE COURT: Okay, but she  
12 just -- do you have the Title 28 there  
13 Section 909, because I thought she just  
14 read it out also. But do you have the  
15 actual --

16 ATTORNEY TANKENSON HODGE:  
17 Well, I have it summarized in our Exhibit  
18 P, Your Honor, if the Court would like me  
19 to put it up I could do that.

20 THE COURT: But first of all,  
21 Mr. Doyle, are you familiar with Section  
22 909 of Title 28, yes or no?

23 THE WITNESS: No.

24 THE COURT: Okay.

25 ATTORNEY TANKENSON HODGE: So

Cross - Mr. Doyle

1 shall I go to the next question, judge?

2 THE COURT: Yes, please.

3 **BY ATTORNEY TANKENSON HODGE:**

4 Q. So then, is it the case that  
5 you were not aware when you were issuing  
6 this assessment that Title 28 Virgin  
7 Islands Code Section -- Chapter 33  
8 provides that the common expenses of a  
9 condominium are to be charged to the  
10 apartment owners in accordance with their  
11 percentage interest in the common areas?

12 ATTORNEY WENTZEL: Objection,  
13 Your Honor.

14 Q. Are you aware of that?

15 ATTORNEY WENTZEL: Objection.  
16 He is not familiar with it. So now she  
17 wants to make legal arguments about what  
18 the statute says and what it means. These  
19 are arguments that need to be addressed to  
20 the Court, not to a layman, and it's  
21 improper to ask him, without even showing  
22 him the language. Her question includes  
23 her interpretation and argument about what  
24 the provisions of the Virgin Islands Code  
25 section mean.

Cross - Mr. Doyle

1 ATTORNEY TANKENSON HODGE:  
2 So, Attorney -- Your Honor, if I may?

3 ATTORNEY WENTZEL: They can  
4 make this argument to the Court and not  
5 waste Mr. Doyle's time with it --

6 THE COURT: Sustained.  
7 Sustained. Let's move on, Attorney Hodge.

8 ATTORNEY TANKENSON HODGE:  
9 Very well, Your Honor.

10 So, in addition to the provision  
11 of Title 28, I would like to direct your  
12 attention to Article 11 of your Articles  
13 of Incorporation. So I wanted to -- then  
14 I wanted to show the witness Exhibit 7  
15 which was the Articles of Incorporation of  
16 Neighborhood Association, if I may?

17 THE COURT: Yes.

18 **BY ATTORNEY TANKENSON HODGE:**

19 Q. And before we leave this  
20 though, that your -- according to the --  
21 your Articles of Incorporation, Mr. Doyle,  
22 your Bylaws would be subject to any  
23 limitations contained in the provisions of  
24 the Condominium Act; do you see that in  
25 Article 11?



Cross - Mr. Doyle

1           **A.** Are you talking about Article  
2 11, Bylaws --

3           **Q.** Yes.

4           **A.** -- on the -- I'm trying to  
5 make it bigger on the screen -- you can't  
6 make it bigger on the screen? Okay. Now  
7 could she ask the question again now that  
8 I've read it.

9           **Q.** The question is, and are you  
10 aware that under your own Articles of  
11 Incorporation your Bylaws are subject to  
12 any limitations contained in the Virgin  
13 Islands Condominium Act Title 28 V.I.C.  
14 section -- Chapter 33?

15           ATTORNEY WENTZEL: Your  
16 Honor, this is exactly what was already  
17 been established.

18           THE COURT: She is asking him  
19 if he is aware that he is limited to the  
20 provisions of Title 28 V.I.C. Section --  
21 I'm sorry, Chapter 33.

22           ATTORNEY WENTZEL: It says it  
23 in the document. That's -- he's aware of  
24 it, of course, but it's not -- he  
25 testified he doesn't know what limitations

Cross - Mr. Doyle

1 are in there. And this is a legal issue  
2 for Miss -- for Attorney Hodge to make to  
3 the Court not to ask Mr. Doyle about. So  
4 now it's in evidence --

5 THE COURT: But it goes to  
6 the issue of them charging NA Association  
7 irrespective of who owns or who has the  
8 deed to the lounge and having them  
9 responsible for these charges in the  
10 future. So I'll allow it.

11 ATTORNEY WENTZEL: But  
12 counsel has not said what in Title 28 of  
13 the Virgin Islands Codes says they can't  
14 do that.

15 ATTORNEY TANKENSON HODGE:  
16 So, Your Honor --

17 ATTORNEY WENTZEL: It's an  
18 innuendo --

19 ATTORNEY TANKENSON HODGE: I  
20 have offered to show what is in Title 28  
21 Section 909 that is directly inconsistent  
22 with what they are doing and counsel  
23 doesn't want me to do that.

24 ATTORNEY WENTZEL: It's not  
25 proper to do it with this witness.

Cross - Mr. Doyle

1 THE COURT: Hold on. Okay,  
2 Attorney Wentzel. Okay, hold on.

3 Attorney Hodge, I'll hear from  
4 you.

5 ATTORNEY TANKENSON HODGE:  
6 This witness was asked by Attorney Wentzel  
7 at length the basis on which he claims the  
8 right to assess the NA members  
9 individually for the common charges for  
10 this unit. And he went through excerpts  
11 of all these corporate documents to show  
12 the Court why he concluded in is thorough  
13 investigation that they had the right to  
14 make these assessments. Now I'm asking  
15 him about the same documents and  
16 limitations there that are directly  
17 contrary to what he has done. And he -- I  
18 certainly think that's proper  
19 cross-examination. If he did a thorough  
20 investigation he should know about this.  
21 If he doesn't know about it we should be  
22 able to point out the ways in which it's  
23 inconsistent with his claimed conclusions.

24 ATTORNEY WENTZEL: This is  
25 argument, Your Honor --

Cross - Mr. Doyle

1 THE COURT: Okay, Attorney  
2 Wentzel, your objection is overruled.

3 All right, Attorney Hodge, you  
4 may proceed.

5 **BY ATTORNEY TANKENSON HODGE:**

6 Q. So just on this particular  
7 point, Mr. Doyle, you see the language in  
8 your Articles of Incorporation that  
9 specify that your Bylaws must be  
10 consistent with the Condominium Act of the  
11 Virgin Islands Code; right?

12 A. This -- I just read this  
13 section and I would like to read it for  
14 the Court, because I'm not sure your --

15 Q. "This section", meaning what  
16 I'm talking about right in your Article  
17 11?

18 A. Yes.

19 Q. All right.

20 A. *The Bylaws of the Association*  
21 *shall be, adopted by the Board of*  
22 *Directors of the Association, and may be*  
23 *altered and amended at any annual meeting*  
24 *or any duly called meeting for the*  
25 *purpose, provided that notice of the*

Cross - Mr. Doyle

1       *meeting shall set forth the purpose, and*  
2       *proposed amendment to the Bylaws, provided*  
3       *votes held by all members of the*  
4       *Association approve such amendment or*  
5       *alteration and subject to any limitations*  
6       *contained in the Declaration or the*  
7       *Condominium Act Title 28 Virgin Islands*  
8       *Code Chapter 3(sic).*

9               I read that and that basically  
10       refers to the votes on bylaws.

11               **Q.** So that's your legal opinion  
12       that that doesn't oppose --

13               **A.** That is my professional  
14       finance opinion on the language there. It  
15       relates to the bylaws. It's in the bylaws  
16       section.

17               **Q.** So do you know whether your  
18       bylaws are or are not consistent with  
19       Title 28 of Virgin Islands Code Chapter  
20       33?

21               **A.** I don't know because I don't  
22       if Virgin Islands Chapter 33 has been  
23       changed since the Bylaws by the declarant.

24               **Q.** Do you know whether your  
25       assessments and Neighborhood Association

Cross - Mr. Doyle

1 members of common charges or maintenance  
2 fees to CU-1 unit when title to the unit  
3 is not in those members is consistent with  
4 the Virgin Islands Code?

5 **A.** Again, I guess I'm confused at  
6 how many times I have to say, I've not  
7 read -- I did not look at the Virgin  
8 Islands Code, I looked at -- I testified  
9 to all the documents I reviewed in  
10 connection with the obligation of NA  
11 members to pay CU-1 dues.

12 THE COURT: And she is only  
13 asking of, Mr. Doyle, whether in your  
14 comparison with the documents that you had  
15 in terms of the obligation of NA to pay  
16 the dues, whether you looked at what is  
17 allowed by law within the Virgin Islands  
18 under the Condominium Act?

19 THE WITNESS: And I did not  
20 look at the Condominium Act, Your Honor.

21 THE COURT: Okay. All right.  
22 We can move on.

23 ATTORNEY WILCZYNSKI: Your  
24 Honor, to the extent that Attorney Hodge  
25 continues to talk about -- can you go back

Cross - Mr. Doyle

1 to that, please. That's the section about  
2 the Bylaws.

3 ATTORNEY TANKENSON HODGE:  
4 Yes.

5 ATTORNEY WILCZYNSKI: And it  
6 has nothing to do with assessments and  
7 dues, and any question associated with  
8 assessment and dues on the section related  
9 to bylaws is inappropriate.

10 ATTORNEY TANKENSON HODGE:  
11 Well, the bylaws were offered into  
12 evidence by Great Bay as was one of the  
13 bases that they rely upon for their  
14 authority to have taken their action. So  
15 I'm asking very clearly, no hidden agenda  
16 --

17 ATTORNEY WILCZYNSKI:  
18 Attorney Hodge, I don't have a  
19 problem with that.

20 THE COURT: Okay, Attorney  
21 Hodge?

22 ATTORNEY TANKENSON HODGE: --  
23 whether what they done is consistent with  
24 the code or not.

25 THE COURT: Okay. And he's

Cross - Mr. Doyle

1 already said, no, he did not consult the  
2 code.

3 ATTORNEY TANKENSON HODGE:  
4 Right. Exactly.

5 ATTORNEY WILCZYNSKI: And  
6 that's fine.

7 THE COURT: Okay.

8 ATTORNEY TANKENSON HODGE:  
9 Just one more moment if I may, Your Honor?

10 THE COURT: Sure.

11 **BY ATTORNEY TANKENSON HODGE:**

12 Q. Okay, and just -- may I add --  
13 I want to ask you this as well while we're  
14 on this issue of the code, do you see  
15 Article 4 of your Articles of  
16 Incorporation that relate to the "Powers"  
17 of the Association?

18 A. Yes.

19 Q. Okay. Once again, you see the  
20 reference to Title 28 Virgin Islands Code  
21 Chapter 33 and -- as part of the  
22 explanation of what your powers are?

23 A. Yes.

24 Q. And you testified earlier in  
25 your examination today in support of your



Cross - Mr. Doyle

1 conclusion that you could assess NA  
2 members individually, that you found you  
3 did have the power to do that under this  
4 section of your Articles. My question is,  
5 did you check the provisions of the Virgin  
6 Islands Condominium Act that relate to  
7 assessments for common charges to see if  
8 your actions were consistent?

9 ATTORNEY WENTZEL: Your  
10 Honor, it's improper. This is not  
11 relating to assessments. The powers is  
12 not relating -- and the Virgin Islands  
13 Code that she's referring, she's not  
14 asking about assessments.

15 THE COURT: But he testified  
16 that he has the power to assess the 288  
17 interest owners.

18 ATTORNEY WENTZEL: Right. So  
19 what is being asked, I don't understand  
20 the question?

21 ATTORNEY TANKENSON HODGE:  
22 Can we ask the witness to read this very  
23 simple and short paragraph called, Powers,  
24 in Article 4 for the Great Bay Condominium  
25 Association?

Cross - Mr. Doyle

1 Mr. Doyle, could you do that?

2 THE COURT: Yes.

3 **BY ATTORNEY TANKENSON HODGE:**

4 **Q.** Mr. Doyle, can you do that?

5 THE COURT: Yes.

6 Mr. Doyle?

7 THE WITNESS: Yes, Your  
8 Honor. *The Association shall have all the*  
9 *powers which an association or condominium*  
10 *owners is entitled under the laws of the*  
11 *Virgin Islands of the United States*  
12 *including specifically Title 28 Virgin*  
13 *Islands Code Chapter 33 and shall*  
14 *specifically have the power to acquire own*  
15 *and convey real and personal property, to*  
16 *make and collect assessments against the*  
17 *members to defray the expenses of the*  
18 *corporation in administering the affairs*  
19 *of the condominium, enforcing the*  
20 *Declaration, and to use of the proceeds of*  
21 *the assessment in carrying out the objects*  
22 *and purposes for which the Association is*  
23 *formed.*

24 **Q.** So do you deny that that  
25 provision relates to your power to make

Cross - Mr. Doyle

1 assessments?

2 **A.** Could you phrase the question  
3 differently, please?

4 **Q.** I said, do you deny that that  
5 article that you just read relates to the  
6 power of your board to make assessments?

7 **A.** It's -- no, it doesn't deny  
8 it. I don't deny that it gives us the  
9 power.

10 **Q.** That it relates to your power  
11 to make assessments? Okay. Thank you.  
12 One more thing I want to ask you about on  
13 this document, sir. I want to direct your  
14 attention to Article -- this is Article 7  
15 subparagraph "D". Can you see that on  
16 your screen? I'll move it up so you can  
17 see the article. Article 7, "Membership,"  
18 and then subsection "D" on page three.  
19 You see that?

20 **A.** Yes.

21 **Q.** Okay. And again, these are  
22 the Articles of Incorporation for your  
23 association Great Bay. Could you read  
24 subparagraph D, please.

25 **A.** *Right to membership in the*

**Cross - Mr. Doyle**

1        *Association shall be establish by the*  
2        *records of the Recorder of Deeds for St.*  
3        *Thomas and St. John as to the owner of*  
4        *record for said reference -- residence.*  
5        *Membership shall be appurtenant and to and*  
6        *may not be separated from the ownership of*  
7        *any Residence and ownership of such*  
8        *Residence shall be the sole qualification*  
9        *for the membership. Membership shall*  
10       *automatically terminate upon the sale or*  
11       *other disposition of the title as when*  
12       *change in ownership is recorded in the*  
13       *public records.*

14                **Q.** So according to your Articles  
15 of Incorporation, the rights of membership  
16 in your association are established by how  
17 title shows up in the Recorder of Deeds  
18 office; right?

19                **A.** Yes.

20                **Q.** Okay. And therefore, we ought  
21 to be looking at who has the ownership of  
22 CU-1 at the Office of Recorder of Deeds to  
23 determine what the rights and  
24 responsibilities of the owner of record of  
25 that unit are for purposes of complying

**Cross - Mr. Doyle**

1 with your Articles of Incorporation?

2 ATTORNEY WENTZEL: Objection.  
3 Object to the form, Your Honor. It's  
4 argumentative. It's the way to membership  
5 that is determined by the recording, not  
6 what rights members have.

7 ATTORNEY TANKENSON HODGE:  
8 Well -- okay.

9 THE COURT: Well, isn't that  
10 the same -- the right to membership  
11 doesn't come with certain -- membership  
12 doesn't come with certain rights?

13 ATTORNEY WENTZEL: It does,  
14 but you don't find those rights in the  
15 Recorder of the Deeds Office, you find  
16 them in the Declarations.

17 **BY ATTORNEY TANKENSON HODGE:**

18 Q. We find the directive to Great  
19 Bay Condominium Association to determine  
20 the rights of membership based on what the  
21 Recorder of Deeds Office tells them about  
22 ownership, so that there is not gonna be  
23 an argument about who has the right of  
24 ownership and membership of a unit. We  
25 look to the Recorder of Deeds Office to

Cross - Mr. Doyle

1 determine that under this language, isn't  
2 that right, Mr. Doyle?

3 ATTORNEY WENTZEL: What's the  
4 relevance? I don't see --

5 THE COURT: Sustained.  
6 Sustained.

7 ATTORNEY TANKENSON HODGE:  
8 May we have permission to show the witness  
9 Plaintiff's Exhibit 9?

10 THE COURT: Yes.

11 **(Plaintiff's Exhibit 9 shared.)**

12 **BY ATTORNEY TANKENSON HODGE:**

13 **Q.** Can you see the exhibit on  
14 your screen, Mr. Doyle?

15 **A.** I see just a number.

16 **Q.** Exhibit 9. Okay. So this is  
17 the Condominium Declaration for Great Bay  
18 Condominiums you testified to earlier?

19 **A.** Yes.

20 **Q.** And I'd like to just direct  
21 your attention once again to the page --  
22 this is gonna page one, "Submission of the  
23 Property," paragraph numbered one here.  
24 Do you see that?

25 **A.** Yes.

Cross - Mr. Doyle

1           **Q.** You can see and agree that the  
2 property that is used to develop the  
3 condominium that we're talking about was  
4 submitted subject to the provisions of  
5 Title 28 Virgin Islands Code Chapter 33?

6           **A.** Yes.

7           **Q.** And again, you did not review  
8 that in determining your position on  
9 whether you could assess the NA members  
10 individually for the CU-1 common  
11 charges --

12                           ATTORNEY WENTZEL: Objection.  
13 Repetitive and misleading.

14                           THE COURT: Overrule.

15 **BY ATTORNEY TANKENSON HODGE:**

16           **Q.** Is that correct, Mr. Doyle?

17           **A.** That I did not look at Virgin  
18 Islands Chapter 33 --

19           **Q.** Correct.

20           **A.** Correct. I did not look at  
21 it.

22                           ATTORNEY TANKENSON HODGE:  
23 May we have permission to show the witness  
24 Plaintiff's Exhibit 7?

25                           THE COURT: Okay. Is there

Cross - Mr. Doyle

1 anything other than Title 28 that you were  
2 referring to on this Declaration?

3 ATTORNEY TANKENSON HODGE:

4 Not on this document, judge.

5 THE COURT: Okay.

6 ATTORNEY TANKENSON HODGE: On  
7 page three the property was submitted  
8 pursuant to Title 28, we just wanted to  
9 note that.

10 THE COURT: Okay. All right.  
11 Very well. All right, thanks. What is  
12 your next exhibit?

13 ATTORNEY TANKENSON HODGE: My  
14 next exhibit is Plaintiff's Exhibit 7.

15 THE COURT: Okay.

16 **(Plaintiff's Exhibit 7 shared.)**

17 **BY ATTORNEY TANKENSON HODGE:**

18 **Q.** Can you see Exhibit 7, Mr.  
19 Doyle?

20 **A.** I see the number.

21 **Q.** Can you see the document now?

22 **A.** Yes.

23 **Q.** I think this was admitted in  
24 evidence. This is the Articles of  
25 Incorporation, Neighborhood Association.



Cross - Mr. Doyle

1 Do you recognize this?

2 A. Yes.

3 THE COURT: Yes, it's been  
4 admitted.

5 **BY ATTORNEY TANKENSON HODGE:**

6 Q. So, I think you said this is  
7 one of the documents that you looked at in  
8 your investigation to determine whether  
9 you could assess NA members directly?

10 A. Correct.

11 Q. So if it's the case that -- if  
12 it is the case that the owner of a  
13 condominium is responsible for its common  
14 charges, then you would want to know  
15 whether the individual members of  
16 Neighborhood Association are responsible  
17 for the obligations of The Neighborhood  
18 Association, isn't that true?

19 A. I'm not sure I understand your  
20 question.

21 Q. If it is the case that the law  
22 provides and that the condominium  
23 documents provide that the owners of a  
24 condominium are responsible for its common  
25 charges, then in order to determine

**Cross - Mr. Doyle**

1 whether the members of Neighborhood  
2 Association are somehow responsible, you  
3 would want to know whether they are  
4 personally obligated for the  
5 responsibilities of Neighborhood  
6 Association, wouldn't you?

7 ATTORNEY WENTZEL: Object to  
8 the form.

9 THE COURT: What's wrong with  
10 the form?

11 ATTORNEY WENTZEL: It's an  
12 improper hypothetical. If the law is X  
13 and you wanted to know Y, then you would  
14 want to look at C. Asking a hypothetical  
15 --

16 THE COURT: It seem as if of  
17 the individual members. It's -- overrule.

18 **BY ATTORNEY TANKENSON HODGE:**

19 **Q.** So directing your attention to  
20 Article -- actually I didn't get an answer  
21 from you, Mr. Doyle, do you agree that you  
22 would want to know that?

23 **A.** Say the question again, this  
24 is getting very confusing.

25 **Q.** If it's the case that the

**Cross - Mr. Doyle**

1 owner of a condominium is responsible for  
2 its common charges, then in connection  
3 with your effort to determine whether you  
4 could assess NA members for the dues for  
5 CU-1, you would want to know whether the  
6 members are personally liable for the  
7 obligations of The Neighborhood  
8 Association, wouldn't you?

9 **A.** Yes.

10 **Q.** Okay. So directing your  
11 attention to Article 11 of this Exhibit 7  
12 Section 1. Do you see that?

13 **A.** Uh-hum.

14 **Q.** Could you read that.

15 **A.** "No officer, director or  
16 member shall be personally liable for any  
17 debt or other obligation of the  
18 Association."

19 **Q.** So that would indicate that  
20 the members of Neighborhood Association  
21 are not personally liable for any debt or  
22 obligation of NA, isn't that true?

23 **A.** Not with connection with the  
24 cost and expenses related to CU-1.

25 **Q.** I beg your pardon?

Cross - Mr. Doyle

1           **A.** I said, not with respect to  
2 the cost and expenses of CU-1 as indicated  
3 in the amendments to the Declaration and  
4 -- that I -- was testifying to earlier  
5 today.

6           **Q.** Right. I heard your earlier  
7 testimony, but now I'm asking you about  
8 this provision in the Articles of  
9 Incorporation of The Neighborhood  
10 Association, it specifies that members are  
11 not personally liable for the obligations  
12 of the Association, you see that there;  
13 right?

14           **A.** I see that there.

15           **Q.** So if Neighborhood Association  
16 is -- was the owner of the unit in some  
17 prior years, even if it were obligated to  
18 pay assessments, its members would not be  
19 personally liable for that, isn't that  
20 what this says?

21           ATTORNEY WENTZEL: Objection.  
22 The -- he testified that the obligation to  
23 pay CU-1 assessments is the obligation of  
24 the owners, not the Association. This  
25 document says the members aren't liable

**Cross - Mr. Doyle**

1 for a debt or obligation of the  
2 Association. That's like a contract the  
3 Association enters into. It's not CU-1  
4 because that obligation is a personal  
5 liability, that's what the document said.  
6 It's not an Association liability.

7 ATTORNEY TANKENSON HODGE:  
8 This is purely legal argument and it  
9 shouldn't really be right --

10 ATTORNEY WENTZEL: And so is  
11 counsel's --

12 ATTORNEY TANKENSON HODGE:  
13 Sorry, it shouldn't really be in the  
14 middle of my cross-examination of the  
15 witness, it's really not an objection to  
16 the question, it's an attempt to conduct  
17 argument on the merits of the case in the  
18 middle of the witness's testimony so that  
19 we can't get a clean answer from him to --

20 THE COURT: Overrule.

21 ATTORNEY WENTZEL: That's  
22 exactly what the question is going to be.

23 THE COURT: Overrule,  
24 Attorney Wentzel.

25 **BY ATTORNEY TANKENSON HODGE:**

Cross - Mr. Doyle

1           **Q.** So, Mr. Doyle, if you were  
2 trying to assess the NA individual members  
3 for the common charges for CU-1, you would  
4 have wanted to look at this provision that  
5 says, they are not personally liable for  
6 any obligations of the Association,  
7 wouldn't you?

8           **A.** Yes.

9           **Q.** And you are aware, are you  
10 not, that under The Neighborhood  
11 Association bylaws assessments to its  
12 members are made solely in the discretion  
13 of its board, are you aware of that?

14          **A.** I've seen that language.

15          **Q.** And you don't claim The  
16 Neighborhood Association assess its  
17 members for these four years of  
18 maintenance fees that you've been trying  
19 to collect from the NA members?

20                   THE COURT: I miss the first  
21 part of that question.

22          **Q.** You don't claim --

23                   ATTORNEY WENTZEL: Can we --  
24 Your Honor, could we refer to the language  
25 that's being asked about so the witness

Cross - Mr. Doyle

1 can see it?

2 THE COURT: Sure.

3 Attorney Hodge.

4 ATTORNEY TANKENSON HODGE:

5 That would be Plaintiff's Exhibit 8, Your  
6 Honor.

7 THE COURT: Okay.

8 **(Plaintiff's Exhibit 8 shared.)**

9 **BY ATTORNEY TANKENSON HODGE:**

10 **Q.** Do you see Exhibit 8 on the  
11 screen, Mr. Doyle?

12 **A.** I see a number. Now I see  
13 some language.

14 **Q.** Bylaws of The Neighborhood  
15 Association, Inc., do you see that?

16 **A.** Yep.

17 **Q.** Okay. And directing your  
18 attention now, I'm going to page 12,  
19 Article 10, "Assessments, Charges and  
20 Collection", do you see that?

21 **A.** Yes.

22 **Q.** Can you read the first  
23 sentence of Section 1?

24 **A.** "Assessments shall be made  
25 against the Members at the sole discretion

**Cross - Mr. Doyle**

1 of the Board. The Assessments shall be  
2 made in the amount" --

3 **Q.** Okay. I would only --

4 **ATTORNEY WENTZEL:** Objection.  
5 Objection. Incomplete without the next  
6 sentence.

7 **THE COURT:** Okay, well you  
8 can on redirect for the sake of completion  
9 you can refer to it, but this is  
10 cross-examination.

11 **ATTORNEY WENTZEL:** Very well.

12 **BY ATTORNEY TANKENSON HODGE:**

13 **Q.** And at the beginning of this  
14 document where terms are defined, you see  
15 on Section 2 "Definitions"?

16 **A.** Yes.

17 **Q.** You understand that  
18 Association here to be the Neighborhood  
19 Association, Inc.; correct?

20 **A.** Yes.

21 **Q.** And the Board to be the  
22 Association of The Neighborhood  
23 Association?

24 **A.** Yes.

25 **Q.** So there's no question that



Cross - Mr. Doyle

1 under these bylaws it's The Neighborhood  
2 Association's word that has the sole  
3 discretion to assess its members; correct?

4 **A.** Yes.

5 ATTORNEY TANKENSON HODGE: I  
6 want to actually have permission to show  
7 the witness now Defendant's Exhibit E.

8 THE COURT: Yes.

9 **(Defendant's Exhibit E shared.)**

10 **BY ATTORNEY TANKENSON HODGE:**

11 **Q.** You see the Third Amendment to  
12 the Supplementary Declaration on your  
13 screen, Mr. Doyle?

14 **A.** Yes.

15 ATTORNEY WENTZEL: May I have  
16 the exhibit number?

17 ATTORNEY TANKENSON HODGE:  
18 It's Exhibit E.

19 ATTORNEY WENTZEL:  
20 Defendant's Exhibit E?

21 ATTORNEY TANKENSON HODGE:  
22 Yes.

23 So this -- you've identified  
24 this document earlier, and you recognize  
25 this as being one of the documents that

Cross - Mr. Doyle

1 was involved in creating The Neighborhood  
2 Association; right?

3 ATTORNEY WENTZEL: Object to  
4 the form. She makes the statement that he  
5 was showed it earlier. This is not true.

6 THE COURT: Yeah, I don't  
7 recall -- it was admitted but I don't  
8 think it was shown to him.

9 ATTORNEY TANKENSON HODGE: I  
10 thought it was, Your Honor.

11 THE COURT: Or at least I  
12 don't recall.

13 ATTORNEY WENTZEL: It was  
14 not.

15 THE COURT: It was admitted  
16 already, yesterday.

17 ATTORNEY TANKENSON HODGE:  
18 Sorry, then I apologize I thought you  
19 shown it today as one of the exhibits with  
20 the plaintiff's exhibit number.

21 So let me withdraw that, Mr.  
22 Doyle, do you see this document before  
23 you, Third Amendment to Supplemental  
24 Declaration --

25 **A.** Yes.

Cross - Mr. Doyle

1           **Q.** -- of Condominium? Are you  
2 familiar with this?

3           **A.** Yes.

4           **Q.** Is this is one of the  
5 documents that you looked at in your  
6 investigation to decide whether you could  
7 assess the NA members individually for  
8 these common charges for CU-1?

9           **A.** Yes.

10          **Q.** So directing your attention  
11 now to paragraph four on page two. Do you  
12 see that?

13          **A.** Yes.

14          **Q.** And I'd like to direct your  
15 attention to the last sentence of that  
16 paragraph that begins, "More  
17 particularly".

18          **A.** Um-hum.

19          **Q.** Could you read that.

20          **A.** "More particularly, and in  
21 accordance with the separate  
22 organizational and governing documents in  
23 the Neighborhood Association, its member  
24 shall control the Neighborhood Association  
25 and be responsible for all costs and

**Cross - Mr. Doyle**

1 expenses related to the ownership and  
2 operation of the commercial unit owned by  
3 it, including but not limited to any  
4 services that it may elect to provide."

5 **Q.** So was that one of the  
6 provisions that you relied on in your  
7 conclusion that you could assess the  
8 members individually for this common  
9 charges rather than The Neighborhood  
10 Association?

11 **A.** It was one of the multiple  
12 places in the documents where it refers to  
13 the Owners of Two Bedroom Suites being  
14 responsible for the cost and expenses of  
15 the operation of the Commercial Unit 1.

16 **Q.** So, and this particular  
17 provision which you just read, the  
18 responsibility is tied to "the ownership  
19 and operation of the Commercial Unit owned  
20 by it", do you see that?

21 **A.** Yes.

22 **Q.** So this provision is providing  
23 that the members are responsible for  
24 paying those costs and expenses for the  
25 commercial unit owned by The Neighborhood

**Cross - Mr. Doyle**

1 Association, but it wouldn't follow from  
2 that language that if the Commercial Unit  
3 was not owned by it, that they would  
4 somehow still be perpetually responsible  
5 for those expenses, would it?

6 **A.** That language was not the same  
7 in some of the other documents that I read  
8 earlier in my testimony.

9 THE COURT: Answer this  
10 specific question that the attorney has  
11 asked.

12 THE WITNESS: Ask the  
13 question again, please.

14 **BY ATTORNEY TANKENSON HODGE:**

15 **Q.** So this language would not  
16 suggest that if the Commercial Unit was no  
17 longer owned by The Neighborhood  
18 Association, that its members would still  
19 be responsible to pay its cost of  
20 operation since the language refers to the  
21 "Commercial Unit owned by it"; correct?

22 **A.** Correct.

23 **Q.** So in your investigation did  
24 you just put weight on other provisions  
25 and ignore this?

Cross - Mr. Doyle

1           **A.** No.

2           **Q.** But you certainly didn't go by  
3 this?

4           **A.** I noted the conflict.

5           **Q.** And the lien that the members  
6 of The Neighborhood Association are  
7 subjected to is a lien imposed -- excuse  
8 me, let me just read this language if I  
9 may. In the next paragraph on this -- I'm  
10 looking now at page two, *in addition to*  
11 *the lien in favor of the Members*  
12 *Association against each Residence or*  
13 *Residence Interest, as applicable, for*  
14 *unpaid assessments, the owners are subject*  
15 *to a lien in favor of the Neighborhood*  
16 *Association to secure any unpaid*  
17 *assessments, fees or charges.* Do you see  
18 that?

19           **A.** Yes.

20           **Q.** There's no provision here for  
21 a lien in favor of the Great Bay  
22 Condominium Association now, is there?

23                   ATTORNEY WENTZEL: It's in  
24 the first sentence.

25           **BY ATTORNEY TANKENSON HODGE:**

Cross - Mr. Doyle

1 Q. In addition to the --

2 Okay, could I just ask that the  
3 witness answer the questions as oppose to  
4 counsel, otherwise perhaps I could go  
5 ahead and examine him?

6 THE COURT: Attorney Wentzel,  
7 okay, let Mr. Doyle respond, please.

8 Mr. Doyle?

9 THE WITNESS: Yeah, I'm  
10 trying to understand the question that  
11 Attorney Hodge is asking, Your Honor.

12 Q. My question is, whether the  
13 lien created by this section is in favor  
14 of The Neighborhood Association and not in  
15 favor of Great Bay?

16 A. And quite frankly with the  
17 document moving up and down I can't see it  
18 to read it.

19 Q. I'm sorry. Where do you want  
20 me to stop?

21 A. Right there.

22 Q. All right.

23 A. The first -- my understanding  
24 of the first part of this paragraph is  
25 that the first lien they are talking about

Cross - Mr. Doyle

1 is a lien in favor of the GBCOA. And in  
2 addition, they could be subject to a lien  
3 in favor of The Neighborhood Association  
4 secondly.

5 ATTORNEY TANKENSON HODGE: So  
6 could we show the witness now Exhibit F?

7 **(Defendant's Exhibit F shared.)**

8 Q. Were you able to see that  
9 document, Mr. Doyle?

10 A. Barely.

11 Q. I can't tell if it's on the  
12 screen. Is it on your screen?

13 A. It's on the screen but --

14 THE COURT: It needs to be  
15 larger?

16 Q. It's too small for you? Is  
17 that better?

18 A. That's better.

19 Q. Okay. So I want to go ahead  
20 and direct your attention if I may to page  
21 three. By the way -- so by the way this  
22 is the Fourth Amendment to the  
23 Declaration.

24 Is this document in evidence? I  
25 believe it should be, judge.



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THE COURT: Yes.

**BY ATTORNEY TANKENSON HODGE:**

**Q.** So directing your attention now to page three, Mr. Doyle, paragraph that begins, "Each owner of a Commercial Unit". Do you see that?

**A.** Yes.

**Q.** Could you read the first sentence.

**A.** "Each Owner of a Commercial Unit shall be a Member of the Condominium Association, be subject to the Bylaws and Regulations, hold voting rights and have a Percentage Ownership allocation that is established in accordance with the Declaration, and share in the Common Expenses and the Common Surplus."

**Q.** Okay. So that sentence of this document, this Fourth Amendment to the Declaration, says that it's the Owner of a Commercial Unit that is subject to share in the common expenses, isn't that true?

**A.** Yes.

**Q.** And, the following paragraph

Cross - Mr. Doyle

1 begins with a sentence that says, "Each  
2 Owner" also, do you see that?

3 **A.** Yes.

4 **Q.** Could you read that first  
5 sentence.

6 **A.** *Each Owner of a Commercial*  
7 *Unit shall be entitled to all revenues*  
8 *generated from the permitted commercial*  
9 *activities conducted in the Commercial*  
10 *Unit and upon any Limited Common Elements*  
11 *and Common Elements which are appurtenant*  
12 *to lien and foreclosure -- appurtenant to*  
13 *a Commercial Unit. Each job --*  
14 *Association's lien and foreclosure rights,*  
15 *and their use shall be subject to*  
16 *reasonable rules and regulation that are*  
17 *promulgated by the Association from time*  
18 *to time in accordance with the*  
19 *Declaration, but none of which shall*  
20 *reasonably interfere with the ability to*  
21 *utilize any Commercial Unit for its*  
22 *intended purpose.*

23 **Q.** And the last sentence of that  
24 paragraph.

25 **A.** *Each Commercial Unit and the*

Cross - Mr. Doyle

1        *Owner shall further be subject to any*  
2        *particular covenants, conditions and*  
3        *restrictions that may be imposed thereon*  
4        *in connection with the creation and*  
5        *conveyance of such Commercial Units.*

6                **Q.** So once again, it's the unit  
7        and its owner that are responsible for  
8        those things and not the members of an  
9        association, isn't that true?

10               **A.** That's what this part of this  
11        Declaration says.

12               **Q.** So is this another one of the  
13        documents you looked at but you found it  
14        inconsistent with your conclusion so you  
15        disregarded it?

16               **A.** I didn't disregard it, I  
17        factored it in, but I thought that the  
18        direct language with respect to the cost  
19        and expenses was prevailing.

20               **Q.** So you factored it in but then  
21        you kind of factored it out, is that  
22        right?

23                                **ATTORNEY WENTZEL:** Objection.  
24        Objection. She's badgering --

25                                **THE COURT:** Overrule.

1 Overrule.

2 **BY ATTORNEY TANKENSON HODGE:**

3 Q. Your answer, sir?

4 THE COURT: Mr. Doyle.

5 THE WITNESS: I considered it  
6 and weighted it in the -- and all the  
7 documents that I reviewed in connection  
8 with the conclusion that I reached.

9 Q. Let's look a little further  
10 down if we can now on page four. This  
11 provision in the Amendments to the  
12 Declaration has to do with the right of  
13 the owner of a commercial unit to transfer  
14 title, are you familiar with this?

15 A. Yes.

16 Q. Okay. And beginning with the  
17 sentence that starts, "The Declarant",  
18 could you read that for us.

19 A. *The Declarant or any Owner of*  
20 *any Commercial Unit may also convey a*  
21 *Commercial Unit, or any subdivision*  
22 *thereof in the case of Declarant, to the*  
23 *Association for no or nominal*  
24 *consideration without the consent of any*  
25 *Owner -- any other Owner or the*

Cross - Mr. Doyle

1       *Association, and the Association shall be*  
2       *obligated to accept such conveyance.*

3               Q.   You're familiar --

4                    ATTORNEY WENTZEL:   Your  
5       Honor, I have an objection.  When I tried  
6       to go into these materials with Mr.  
7       Cutrona the Court said, that goes to the  
8       merits, we're gonna deal with that later.  
9       Now counsel is going exclusively into the  
10      issue of the deed and the transfer and the  
11      ownership, and we're not talking about  
12      liability for assessments anymore, it  
13      can't -- it shouldn't be two standards.  
14      She gets to go into the merits, and did  
15      the ownership transfer, and did they have  
16      the right, and I was restricted from that  
17      and limited to the issue of the lock-out  
18      tag- -- your lock-out procedures, were we  
19      gonna lock it out, what were we gonna do  
20      with the assessments.

21                   THE COURT:   But you were  
22      using, for example, Miss Rolando's  
23      statement --

24                   ATTORNEY WENTZEL:   Yes.

25                   THE COURT:   -- and --

Cross - Mr. Doyle

1                   ATTORNEY WENTZEL: But it  
2 didn't matter -- and her statement was it  
3 didn't matter if they transferred it.

4                   ATTORNEY TANKENSON HODGE:  
5 So --

6                   THE COURT: And you are  
7 looking at an exhibit that has already  
8 been admitted and it is a -- I'm sorry, is  
9 this the Fourth Amendment?

10                  ATTORNEY TANKENSON HODGE:  
11 Yeah, this is the Fourth Amendment to the  
12 Declaration Establishing the Plan of  
13 Condominium.

14                  THE COURT: Right. Yes. So  
15 it's allowed, Attorney Wentzel, but you'll  
16 also have the opportunity to recross him  
17 -- I'm sorry, redirect him.

18                  ATTORNEY WENTZEL: Thank you.

19 **BY ATTORNEY TANKENSON HODGE:**

20                  **Q.** So you were familiar with that  
21 provision, correct, Mr. Doyle?

22                  **A.** Yes.

23                  **Q.** And then in the next paragraph  
24 here, there is a provision that begins  
25 more particularly that has to do with the

Cross - Mr. Doyle

1 issues we're talking about. Would you  
2 read that, "More particularly", sentence.

3 **A.** *More particularly, in*  
4 *accordance with separate organizational*  
5 *and governing documents in the*  
6 *Neighborhood Association, its member shall*  
7 *control the Neighborhood Association and*  
8 *be responsible for all costs and expenses*  
9 *related to the ownership, maintenance and*  
10 *operation of the Commercial Unit owned by*  
11 *it, including but not limited to any*  
12 *services it may elect to provide.*

13 **Q.** So once again the language of  
14 this provision is that the Association and  
15 its members are responsible for the cost  
16 of maintenance, ownership, and operation  
17 of the Commercial Unit owned by it;  
18 correct?

19 **A.** Right.

20 **Q.** So once again this is one of  
21 those provisions inconsistent with the  
22 position you've taken that you chose not  
23 to give any weight to?

24 ATTORNEY WENTZEL: Objection.  
25 That's not what he said. He said he did

Cross - Mr. Doyle

1 give it weight.

2 THE COURT: Yes, that is  
3 true. He did say that, Attorney Hodge, so  
4 rephrase your question.

5 **BY ATTORNEY TANKENSON HODGE:**

6 Q. This is another provision that  
7 is inconsistent with the action you took  
8 that was based on the notion that, the NA  
9 members were perpetually responsible for  
10 these expenses and not only while the  
11 commercial unit was owned by NA, is that  
12 true?

13 A. Say that again, please.

14 Q. This is another provision in  
15 the condominium documents that is  
16 inconsistent with the position you have  
17 taken that you can assess the NA members  
18 directly for the cost of operating a  
19 commercial unit whether or not NA owns the  
20 unit and, in fact, no matter who owns it?

21 A. This is inconsistent with my  
22 conclusion and inconsistent with the other  
23 language.

24 Q. With the other language that  
25 you have relied on -- that you have chosen



**Cross - Mr. Doyle**

1 to rely on? Is that right?

2 **A.** Yes.

3 **Q.** And am I correct in  
4 understanding that you said this Fourth  
5 Amendment was the provision in the  
6 declaration that actually establish The  
7 Neighborhood Association and its role with  
8 the CU-1?

9 ATTORNEY WENTZEL: Incorrect,  
10 Your Honor, he did not --

11 ATTORNEY TANKENSON HODGE:  
12 Okay please, counsel. Please could we  
13 just --

14 THE COURT: Okay, so rephrase  
15 your question, Attorney Hodge.

16 **BY ATTORNEY TANKENSON HODGE:**

17 **Q.** Very well. Mr. Doyle, is this  
18 the provision in the condominium documents  
19 that represented the amendment that  
20 dedicated the buildings to the Condominium  
21 and that provided for the creation of The  
22 Neighborhood Association?

23 ATTORNEY WENTZEL: Can the  
24 witness see the whole document, Your  
25 Honor?

Cross - Mr. Doyle

1 ATTORNEY TANKENSON HODGE: As  
2 much as he wants.

3 THE COURT: Yes.

4 THE WITNESS: Start at the  
5 top and I'll read it.

6 **(Brief pause in record.)**

7 Next page. Next page, please.  
8 Okay, next page, please. This looks like  
9 the document that basically brought the  
10 Commercial Unit into the Condominium  
11 Property.

12 **BY ATTORNEY TANKENSON HODGE:**

13 **Q.** And does it also contemplate  
14 the formation of The Neighborhood  
15 Association?

16 **A.** Yes.

17 **Q.** Do you need to see anymore to  
18 become --

19 ATTORNEY WENTZEL: How about  
20 paragraph two?

21 ATTORNEY TANKENSON HODGE:  
22 Well, could we leave that for  
23 cross-examination and let me do this  
24 cross.

25 ATTORNEY WENTZEL: Okay,

Cross - Mr. Doyle

1 let's mislead him and leave it for  
2 redirect.

3 ATTORNEY TANKENSON HODGE: I  
4 have to say, Your Honor, I'm just not used  
5 to objections with this level of ad  
6 hominem attack.

7 THE COURT: Okay, Attorney  
8 Wentzel?

9 ATTORNEY WENTZEL: I  
10 apologize, Your Honor. I apologize.

11 THE COURT: Okay. Thank you.

12 **BY ATTORNEY TANKENSON HODGE:**

13 Q. Okay. So --

14 THE COURT: Your last  
15 statement, Attorney -- your last part of  
16 your question, one, was, this is the  
17 document that brought in the Commercial  
18 Unit one into the condo association  
19 property?

20 ATTORNEY TANKENSON HODGE:  
21 Correct. And then the following question  
22 was, was this also the document that  
23 contemplated the creation of The  
24 Neighborhood Association? And I was  
25 allowing the witness to look at the

Cross - Mr. Doyle

1 language that I was thinking about, and if  
2 he needs to see more I'll move down. I'm  
3 looking at page two of the exhibit that  
4 has the words, quote, "Neighborhood  
5 Association", in quotes.

6 THE COURT: Okay. Very well.  
7 Mr. Doyle, is that sufficient or  
8 do you need to see more?

9 THE WITNESS: No, that's  
10 sufficient, Your Honor.

11 THE COURT: Okay.

12 **BY ATTORNEY TANKENSON HODGE:**

13 Q. So your answer to the question  
14 is what, please?

15 A. This is the document that  
16 looks like, setup, The Neighborhood  
17 Association and what brought in the  
18 Commercial Unit. Hang on for a second.  
19 Just bear with me a second.

20 Q. Sorry, you need it back up? I  
21 was too quick on the draw here.

22 A. Well, the --

23 Q. Do you need to go back, Mr.  
24 Doyle?

25 A. Yeah, go back to the, whereas.

Cross - Mr. Doyle

1 Doesn't this -- this is just putting in  
2 Building H.

3 Q. Was that Exhibit F? So, in  
4 the introduction that you were looking at  
5 originally that involved Building H, you  
6 saw that, right, on page one? You see  
7 that?

8 A. And Building H is the unit  
9 that has CU-1.

10 Q. And then if we look down  
11 further into this language of definitions,  
12 it states that paragraph five, "As  
13 contemplated by Section 19 of the  
14 Declaration and in accordance with the  
15 Condominium Act of the Virgin Islands,  
16 subsequent phases of the Condominium may  
17 include Commercial Units in addition to  
18 Residences. In anticipation of the  
19 creation of a Commercial Unit, the  
20 Declaration is hereby amended to include  
21 the following provisions". And then it  
22 has, one, with the definition of  
23 "Commercial Unit," and one, with the  
24 definition of "Neighborhood Association"  
25 identified as a "not for profit

Cross - Mr. Doyle

1 corporation to be organized for the  
2 purpose of owning the Commercial Unit".  
3 Do you see that?

4 **A.** Yes.

5 **Q.** Is that your understanding of  
6 what this particular Fourth Amendment was  
7 doing?

8 **A.** Yes.

9 **Q.** Okay.

10 **A.** But this sets up for the  
11 commercial unit, but the commercial unit  
12 is in Building G not Building H.

13 **Q.** Okay. But this was a document  
14 -- a condominium declaration amendment  
15 that specifically contemplated both the  
16 creation of the Commercial Unit and  
17 Neighborhood Association, right?

18 **A.** That's what I read it to do.

19 **Q.** And the language that I took  
20 you through about responsibility of owners  
21 related to the operation of the Commercial  
22 Unit owned by it is in that same Fourth  
23 Amendment to the Declaration; correct?

24 **A.** It's in the Fourth Amendment  
25 to the Declaration, but the Fourth

**Cross - Mr. Doyle**

1 Amendment to the Declaration didn't  
2 contribute the Commercial Unit to the  
3 Property yet, it just conditioned it.

4 **Q.** When you say "didn't  
5 contribute", you mean it wasn't -- You  
6 mean it wasn't actually -- the title to  
7 the Commercial Unit wasn't actually  
8 transferred by this document it just --

9 **A.** That's my understanding.  
10 Title to this unit was not conveyed with  
11 this document.

12 **Q.** But the capacity to create it  
13 and convey it was created here, wasn't it?

14 **A.** Yes.

15 **Q.** I'm gonna close this again.  
16 So a different area that I wanted to ask  
17 you about, Mr. Doyle, had to do with your  
18 testimony about your board's actions,  
19 discussions regarding what you told the  
20 Court was a decision that you were not  
21 going to enforce your assessment of common  
22 charges on Neighborhood Association  
23 members by lock-out or anything other than  
24 a lawsuit against them to collect money,  
25 is that your testimony?

Cross - Mr. Doyle

1           **A.** Yes.

2           **Q.** And you were asked whether you  
3 reduced that to writing in the form of  
4 minutes of a board meeting or anything of  
5 that sort and you -- I think, you said no;  
6 is that right?

7           **A.** I said I don't recall -- if  
8 there were minutes I don't recall  
9 approving them. I recall the conversation  
10 and the discussion we had with respect to  
11 that before we sent out the bill.

12           **Q.** So that would have been, by  
13 definition, if it was before you send out  
14 the bill it would have had to been in  
15 early October of this year; correct?

16           **A.** No, it would have been -- no,  
17 it would have been before that.

18           **Q.** Oh.

19           **A.** 'Cause I tried to describe the  
20 process --

21           **Q.** How long ago was it, that's  
22 what I'm trying to find out? How long ago  
23 --

24           **A.** Probably early September.

25           **Q.** Early September. Okay. And



Cross - Mr. Doyle

1 you're saying that from then to now you  
2 couldn't prepare any documents that would  
3 put into writing a decision and  
4 determination that you weren't going to  
5 lock people out if they didn't pay these  
6 assessments or impose other penalties such  
7 as renting their units up to and including  
8 today December 9th?

9 **A.** We didn't prepare documents to  
10 tell ourselves that we decided not to lock  
11 people out and not to lien them.

12 **Q.** And, in fact, you weren't  
13 bound by any such discussion, were you?

14 **A.** I'm not sure -- I mean -- what  
15 do you mean?

16 **Q.** You're not claiming you took  
17 -- you're not claiming you took formal  
18 corporate action that would bind you not  
19 to do that, are you?

20 **A.** I'm not claiming that 'cause I  
21 don't recall.

22 **Q.** But it doesn't take you much  
23 time at all to put in writing corporate  
24 actions of Great Bay when you want to,  
25 isn't that true?

Cross - Mr. Doyle

1           **A.** There were a lot of things  
2 going on at the time; we were completing  
3 our budget, it was the regular billing  
4 cycle, and it was just tremendous amount  
5 going on and we are a volunteer board.

6           **Q.** When the Court entered the  
7 temporary restraining order in this case,  
8 you did not immediately send a notice to  
9 The Neighborhood Association members  
10 indicating that the invoices had been  
11 rescinded, did you?

12           **A.** No, because we had gotten a  
13 copy as an owner of the commercial -- as  
14 an owner of a suite we had gotten a copy  
15 of the notice that The Neighborhood  
16 Association sent to every member. They  
17 already knew.

18           **Q.** You did not send a notice --  
19 you did not send it? Excuse me, just let  
20 me repeat the question. You did not send  
21 a notice to the members of Neighborhood  
22 Association when the temporary restraining  
23 order was issued indicating that your  
24 invoices were rescinded or that you were  
25 taking any other action to comply with the

Cross - Mr. Doyle

1       restraining order, did you?

2               **A.** We took action to comply with  
3 the restraining order.

4               **Q.** No, you didn't send a notice  
5 to Neighborhood Association members  
6 indicating that you were doing so, isn't  
7 that true?

8               **A.** No.

9               **Q.** But you did stop to prepare a  
10 formal written unanimous consent about  
11 what you were going to do about it, didn't  
12 you?

13               **A.** We basically -- I believe it  
14 was a formal written consent. I have to  
15 go back and again look 'cause I don't have  
16 that record in front of me.

17                       ATTORNEY TANKENSON HODGE:  
18 Your Honor, may we have permission to show  
19 the witness Exhibit N like Nancy?

20                       THE COURT: Yes. Okay,  
21 Attorney Hodge, I -- we need to take --  
22 Attorney Hodge?

23                               Yes, judge.

24                       THE COURT: We need to take a  
25 ten-minute break or 15-minute break so

Cross - Mr. Doyle

1 some of us can have a little lunch. I  
2 don't know if you all had had the  
3 opportunity to eat or not.

4 ATTORNEY TANKENSON HODGE:  
5 I'm happy to break and come back, Your  
6 Honor, whenever you're ready for us.

7 THE COURT: Okay, it's 15 --

8 ATTORNEY WILCZYNSKI: Your  
9 Honor, what is your expectation in terms  
10 of how long we can expect today to go, not  
11 that I'm, you know, gonna care too much  
12 one way or the other, I just would kind of  
13 like to know.

14 THE COURT: I would like to  
15 finish with Mr. Doyle today. So even if  
16 it's after 5:00, I would like to finish  
17 with him.

18 ATTORNEY WILCZYNSKI: Does  
19 that include redirect?

20 THE COURT: Yes. To  
21 completely finish with him, that's why I  
22 want to take the break now if we need to  
23 -- someone needs to eat or anything. How  
24 many minutes, 15 minutes, 20 minutes?

25 ATTORNEY TANKENSON HODGE:

Cross - Mr. Doyle

1 That's fine, judge.

2 THE WITNESS: Whatever Your  
3 Honor wants.

4 THE COURT: Okay, Attorney  
5 Wentzel?

6 ATTORNEY WENTZEL: Yeah, 20  
7 minutes would be good I got to go  
8 downstairs.

9 THE COURT: Twenty minutes  
10 we'll be back, at 4:25PM.

11 ATTORNEY TANKENSON HODGE:  
12 Thank you, judge.

13 ATTORNEY WENTZEL: Thank you,  
14 Your Honor.

15 **(Lunch break was had.)**

16 THE COURT: Okay, are we  
17 ready to start?

18 ATTORNEY WENTZEL: Yes, Your  
19 Honor.

20 THE COURT: Okay, Attorney  
21 Hodge, you may continue.

22 ATTORNEY TANKENSON HODGE:  
23 Thank you, judge.

24 **BY ATTORNEY TANKENSON HODGE:**

25 **Q.** Mr. Doyle we were talking

Cross - Mr. Doyle

1 about the issue of whether your board had  
2 made any written record of this discussion  
3 that you claim happened that was -- to  
4 support a decision not impose any  
5 lock-outs or any punitive measures to  
6 collect from any member if they didn't  
7 pay, you remember that line of questions?

8 **A.** I remember you ask me whether  
9 we had -- where there was a UWC or a  
10 motion to not make a decision and to not  
11 take action. And I can tell you that all  
12 the UWCs that we approve are to take  
13 action. When don't take action we don't  
14 usually memorialize it. We don't --  
15 certain we don't do a UWC.

16 **Q.** So, Mr. Doyle, during the  
17 break that we just took, the 20-minute  
18 break, did you stop to have a discussion  
19 with your lawyers about your testimony?

20 ATTORNEY WENTZEL: Objection.

21 THE WITNESS: No.

22 THE COURT: Overrule. You  
23 asked the same question yesterday,  
24 Attorney Wentzel.

25 ATTORNEY WENTZEL: I was not

Cross - Mr. Doyle

1 asking for his discussion with his own  
2 attorney, Your Honor.

3 ATTORNEY TANKENSON HODGE: I  
4 don't want to know the substance of it, I  
5 want to know if this witness talked to his  
6 lawyers about his testimony during that  
7 break, which I think would have been  
8 inappropriate and I want to know.

9 ATTORNEY WENTZEL: There was  
10 no question pending on the break. It's  
11 not inappropriate to -- for a lawyer to  
12 consult with his client.

13 **BY ATTORNEY TANKENSON HODGE:**

14 Q. So, Mr. Doyle, do you concede  
15 that you talked to your lawyers during the  
16 break about your testimony?

17 ATTORNEY WENTZEL: I object.

18 THE COURT: Hold on. Hold  
19 on.

20 ATTORNEY WENTZEL: I object  
21 to the question --

22 THE COURT: Try to remember  
23 from yesterday you ask the same question  
24 of Miss, was it Miss Leighton-Hermann?

25 ATTORNEY WENTZEL: That's

**Cross - Mr. Doyle**

1 correct, Your Honor. And Attorney Hodge  
2 is not legal counsel for Miss  
3 Leighton-Hermann.

4 ATTORNEY TANKENSON HODGE: I  
5 don't think there was any -- there was no  
6 break where I was asked about talking to a  
7 witness that I recall. But, anyway, I  
8 didn't talk to any witnesses --

9 THE COURT: No, no, no.  
10 Yeah, right. But I was trying to recall  
11 the testimony from yesterday when Attorney  
12 Wentzel inquired -- okay. Sustained.  
13 Let's move on.

14 **BY ATTORNEY TANKENSON HODGE:**

15 Q. So, Mr. Doyle, the question  
16 is, did your board, according to you, have  
17 a meeting, think you said it would have  
18 been in September, at which you claim a  
19 decision was taken not to impose any  
20 lock-out or other punitive measures on  
21 Neighborhood Association members if they  
22 didn't pay these assessments? Do you  
23 claim such meeting took place?

24 A. We -- I claim that we had  
25 those discussions. Whether they were in a



Cross - Mr. Doyle

1 physical meeting or phone call, I don't  
2 recall. Those decisions did not take  
3 action, not to lien people, not to lock  
4 people out, not to rent their places.  
5 That decision to not take action was made  
6 by our board.

7 Q. Okay, so my question is, did  
8 you make any minutes or unanimous consents  
9 to reflect that decision?

10 A. No, because I -- we don't -- I  
11 just told you we don't make minutes to not  
12 make a decision, we make minutes to make a  
13 decision. We made -- we did a UWC to  
14 bill. That's a proactive act of the  
15 board. The board doesn't make UWCs to do  
16 nothing, 'cause it's a lot of time -- we  
17 have to have an attorney draft it up, we  
18 have to get the documents shuffled around  
19 to everybody. We don't do that when we  
20 don't make a decision to do nothing.

21 THE COURT: So, Mr. Doyle,  
22 just one minute. I'm trying to understand  
23 your testimony is that when the board  
24 meets it does not reduce the contents of  
25 that meeting or the communications,

**Cross - Mr. Doyle**

1 decisions or not decisions or any type of  
2 communication to writing?

3 THE WITNESS: Your Honor, we  
4 have minutes, but those minutes aren't  
5 approved until usually the next meeting.  
6 If we have a meeting that isn't a board  
7 meeting, and -- then we wouldn't have  
8 minutes, we would have a UWC if we met and  
9 we decided to take some action, whether  
10 it's to hire Concord, whether its to issue  
11 a bill, then we would have -- we would  
12 have something reduce to writing. But we  
13 don't have writings for every phone  
14 conversation we have.

15 THE COURT: I'm not talking  
16 about phone conversation, I'm talking  
17 about actual meetings when everyone meets  
18 and they have discussions. Okay. All  
19 right.

20 Attorney Hodge.

21 **BY ATTORNEY TANKENSON HODGE:**

22 Q. So, Mr. Doyle, I'm not asking  
23 you about somebody deciding to do nothing,  
24 I'm asking you about a board that I  
25 understood you to say, specifically

**Cross - Mr. Doyle**

1 decided on a particular course of action,  
2 namely, that you were not going to impose  
3 lock-outs or other kinds of punitive  
4 measures on these owners if they didn't  
5 pay. That's not a do nothing, that's a  
6 decision specifically on a matter of board  
7 policy. I'm asking you now, sir --

8 **A.** I --

9 **Q.** Sir, wait let me finish my  
10 question. I'm asking you now, do you  
11 claim your board had a discussion at which  
12 a decision was taken to take no  
13 enforcement steps against NA members  
14 including lock-outs if they didn't pay?

15 **ATTORNEY WILCZYNSKI:**  
16 Objection. Argumentative.

17 **THE COURT:** Overrule.

18 **THE WITNESS:** We had  
19 discussions with respect to the billing.  
20 Those discussions covered four major  
21 topics, do we lock people out? We decided  
22 not to lock people out. Are we gonna lien  
23 people? We decided not to lien people.  
24 Were we gonna rent people's units out, we  
25 didn't even discuss that because that

**Cross - Mr. Doyle**

1 wasn't even a consideration. We did  
2 decide that when all the bills came in at  
3 the due date, we would most likely, and we  
4 didn't make a decision to do that yet, but  
5 most likely sue for monetary damages  
6 depending on who paid their bill.

7 **BY ATTORNEY TANKENSON HODGE:**

8 **Q.** So that meeting when those  
9 four topics were discussed or not  
10 discussed, is it your testimony that you  
11 made no minutes and no written record of  
12 that?

13 **A.** My testimony is, that I know I  
14 had the discussions. I don't recall  
15 whether we had them in a meeting, in  
16 executive session at a board meeting, or  
17 on a phone call. I know the discussions  
18 happened.

19 **Q.** Sir, my question is, whether a  
20 written memorandum of that was made, yes  
21 or no?

22 **A.** No.

23 **Q.** Do you have any writing that  
24 says that, yes or no?

25 **A.** No.

Cross - Mr. Doyle

1           **Q.** Okay. But we do know that  
2 when the temporary restraining order was  
3 issued by this court on November 12th,  
4 that within two days your board was able  
5 to prepare and send to me a unanimous  
6 consent signed by all your board members  
7 that reflected that you were going to  
8 instruct your Concord servicing people on  
9 billing, but not that you were actually  
10 notifying NA members about this action?  
11 You prepared and signed such a unanimous  
12 consent within two days; correct?

13           **A.** Yes.

14           ATTORNEY WENTZEL: Your  
15 Honor, I got lost in the question. Object  
16 to the form. Could I hear it again?

17           THE COURT: Okay, just repeat  
18 the question, Attorney Hodge, please.

19           **BY ATTORNEY TANKENSON HODGE:**

20           **Q.** Isn't it true that within two  
21 days of the Court entering a temporary  
22 restraining order in this case, your  
23 association caused to be prepared and sent  
24 to me a written unanimous consent  
25 reflecting that the temporary restraining

Cross - Mr. Doyle

1 order had been answered and that you were  
2 giving instructions, or you were going to  
3 give instructions to the Concord Servicing  
4 Corporation for the billing about this,  
5 but not that you were not taking any other  
6 action, isn't that true?

7 **A.** Okay, that's very complicated  
8 question. I can testify that within days  
9 of the judge's order we put together a  
10 unanimous written consent to tell Concord  
11 not to do any- -- not to do anything more  
12 with collections because we didn't want to  
13 violate the judge's order of not doing  
14 anything.

15 ATTORNEY TANKENSON HODGE:  
16 Your Honor, may we have permission to show  
17 the witness the Defendant's Exhibit N-1?

18 THE COURT: Yes, you may.

19 **(Defendant's Exhibit N-1 shared.)**

20 **BY ATTORNEY TANKENSON HODGE:**

21 **Q.** Is the exhibit visible on the  
22 screen to you, Mr. Doyle?

23 **A.** I can see part of it.

24 **Q.** Let me just scroll it down a  
25 little bit. Do you see the exhibit number

Cross - Mr. Doyle

1 there?

2 **A.** Yes.

3 **Q.** And do you see the signature  
4 pages?

5 **A.** Yes.

6 **Q.** And do you recognize that?

7 **A.** Can you move it up slowly?

8 **Q.** Yes, I will.

9 **A.** Keep going. Keep going.

10 Next. Keep going. I'm just looking for  
11 my signature. Yes, I recognize that.

12 **Q.** And do you recognize this to  
13 be the unanimous written consent that your  
14 board had prepared and executed to reflect  
15 this action that you had taken by  
16 unanimous consent?

17 **A.** Yes.

18 **Q.** Okay. And this was done -- if  
19 the TRO was entered on November 12th at  
20 5:20 in the afternoon, and this is dated  
21 November 14th, this was done within two  
22 days; correct?

23 **A.** Yes.

24 **Q.** Okay. And you were saying,  
25 however, that with regard to this meeting

**Cross - Mr. Doyle**

1       sometime in September of 2001 you have no  
2       similar document or -- and indeed no  
3       minutes to show us to reflect any  
4       determination that you were not going to  
5       use the enforcement mechanisms that we've  
6       talked about, namely the lock-out, the  
7       rental of people's units, the other kinds  
8       of punitive measures if they didn't pay?

9               **A.** Attorney Hodge, I've told you  
10       that when we take action or when we do  
11       something --

12               THE COURT: Okay, Mr. Doyle?  
13       Mr. Doyle? Mr. Doyle, calm down. Answer  
14       the question, please.

15               THE WITNESS: There is no  
16       writing for inaction, there are writing  
17       for actions. This unanimous written  
18       consent told the Concord company to stand  
19       down.

20       **BY ATTORNEY TANKENSON HODGE:**

21               **Q.** So the difference between an  
22       action and your presentation and an  
23       inaction is when you decide nothing or  
24       when you decide something?

25               ATTORNEY WENTZEL: Objection.



Cross - Mr. Doyle

1 Argumentative.

2 THE COURT: Overrule.

3 THE WITNESS: An action to me  
4 is when we do something. Inaction is when  
5 there's nothing to be done.

6 **BY ATTORNEY TANKENSON HODGE:**

7 Q. Well, Mr. Doyle, from the  
8 point of view of The Neighborhood  
9 Association members, they received from  
10 you, from your association, a memorandum  
11 which is in evidence, Exhibit B, that  
12 spent four pages telling them about the  
13 fact that they were responsible for the  
14 maintenance fees for CU-1 for a period of  
15 five years, and that these assessments  
16 represented, quote, "delinquent  
17 assessments", you are aware of that;  
18 right?

19 A. Yes.

20 Q. And that payment was due,  
21 quote, immediately, you're aware of that;  
22 right?

23 A. Yes.

24 Q. And the payment was due,  
25 quote, "immediately", you are aware of

Cross - Mr. Doyle

1 that; correct?

2 **A.** Due within 30 days.

3 **Q.** Well, the memo says, due  
4 immediately, are you not aware of that?

5 **A.** It may have said due  
6 immediately, they were given 30 days to  
7 pay.

8 **Q.** And in referring to this as a  
9 delinquent assessment in your memo of  
10 October 22nd, you knew this was coming to  
11 The Neighborhood Association members  
12 within the same month within a period of  
13 about three weeks of the Ritz-Carlton memo  
14 that's in evidence as Exhibit C, that told  
15 those same people that if they had, quote,  
16 "delinquent balances", or, quote, "unpaid  
17 assessments", that they would be subject  
18 to lock-out? You knew that, right?

19 **A.** Yes.

20 **Q.** You must have gotten one of  
21 those notices from Ritz-Carlton yourself  
22 because you are an owner out there;  
23 correct?

24 **A.** Yes.

25 **Q.** Right. So you knew that The

Cross - Mr. Doyle

1 Neighborhood Association members that were  
2 getting your memo of October 22nd about  
3 these supposedly delinquent assessments  
4 that they had to pay immediately, had just  
5 within weeks gotten this memo that if they  
6 had any delinquent or unpaid balances they  
7 were subject to being locked out? True?

8 **A.** Could you please simplify the  
9 question?

10 **Q.** It's pretty simple, you knew  
11 that when -- you knew when you sent your  
12 memo on October 22nd telling the NA  
13 members that they were subject to  
14 delinquent assessments that were due  
15 immediately, that they had just gotten  
16 from the Ritz-Carlton Club within weeks  
17 before, a notification that if they had  
18 any unpaid balances or delinquent balances  
19 they would be subject to being locked out,  
20 you knew that; true?

21 **A.** We knew we rendered the bills  
22 for the regular annual assessments  
23 somewhere around October 1st or October  
24 2nd. With that, there was the standard  
25 language, which has been on every bill, at

**Cross - Mr. Doyle**

1 least for as long as I've been a member of  
2 the Club, which relates to being past due,  
3 delinquency, and lock-out. There was  
4 nothing special about it. It was just the  
5 regular --

6 **Q.** Right, you knew that was  
7 standard language that people knew that if  
8 they didn't pay, if they had delinquent  
9 balances they were subject to being locked  
10 out?

11 **A.** Correct.

12 **Q.** That was essentially  
13 institutional knowledge at the  
14 Condominium; right?

15 **A.** Yes.

16 **Q.** And you sent them this memo a  
17 couple of weeks later telling them that  
18 they had this delinquent balance, this  
19 unpaid delinquent assessment due  
20 immediately without telling them that if  
21 they didn't pay you weren't gonna lock  
22 them out, and you certainly weren't gonna  
23 rent their space, and you weren't going to  
24 do any of the others you claim your board  
25 decided you wouldn't do? You didn't tell

Cross - Mr. Doyle

1           them any of that, did you?

2                   **A.** It wasn't in the letter, no.

3                   **Q.** Right. It wasn't in the  
4 letter. It wasn't in any communication  
5 you sent to the NA members at all, was it?

6                   **A.** No.

7                   **Q.** So wasn't it reasonable to  
8 assume that they were going to understand  
9 when they got this memo from you, and  
10 these invoices from you, that if they  
11 didn't pay they were gonna be subject to  
12 those standard punishments?

13                   **A.** No. I can't speculate -- I  
14 can't speculate as to what they thought.

15                   **Q.** But you had good reason to  
16 suspect that is exactly what they think,  
17 didn't you? I mean, you're an experience  
18 business man. If you get a notice that  
19 tells you you have a delinquent assessment  
20 that's due immediately following a notice  
21 of just a few weeks before about the  
22 penalties for delinquent assessments  
23 including lock-out, wouldn't you obviously  
24 and certainly understand the two to be  
25 connected?

Cross - Mr. Doyle

1 ATTORNEY WILCZYNSKI:

2 Objection, Your Honor, argumentative.

3 THE COURT: Overrule.

4 THE WITNESS: If I got a bill  
5 like that for that amount of money, the  
6 first thing I would have done was reached  
7 out and talk to the issuer of the bill.

8 **BY ATTORNEY TANKENSON HODGE:**

9 Q. So you were waiting for them  
10 to call you and say, could I please not  
11 pay or something?

12 A. To ask questions, I would --  
13 you ask me what would I do? I would -- I  
14 expect I would be reaching out -- if  
15 somebody sends me a bill that I'm not  
16 expecting, I reach out and find out what's  
17 going on. Why am I getting this bill?

18 Q. You spent four pages telling  
19 them what was going on in this memo,  
20 didn't you?

21 A. The memo speaks for itself,  
22 yes.

23 Q. That it does. How many people  
24 -- no, let's put it a different way. How  
25 much of the money you were looking to

Cross - Mr. Doyle

1 collect did you succeed in collecting in  
2 response to this memo?

3 **A.** Actually don't know. I  
4 mean --

5 **Q.** But you were telling us that  
6 the Developer --

7 **A.** The Developer paid for its  
8 unit.

9 **Q.** Wait, wait, sir, I didn't  
10 finish my question. You were telling us  
11 that the Developer paid --

12 **A.** Yes.

13 **Q.** -- and it was an exhibit  
14 marked from a Mr. Hayward, is that who you  
15 were talking about when you called it The  
16 Developer?

17 **A.** Yes.

18 **Q.** But that is only a payment of  
19 a interest, that's not the 49 percent you  
20 were talking about?

21 **A.** I never said that the 49  
22 interest paid.

23 **Q.** Oh, I see. So the Hayward --  
24 the payment that you got was from somebody  
25 representing a interest, is that right?

Cross - Mr. Doyle

1           **A.** Yes.

2           **Q.** Do you -- and as you sit here  
3 today you you're telling us you don't know  
4 how many other people paid?

5           **A.** I -- with a specificity, I do  
6 not know how many people have paid. I had  
7 not inquired.

8           **Q.** There's been an indication in  
9 a filing, I think it was in Miss Chung's  
10 affidavit, that some people asked for  
11 refunds, are you aware of that?

12          **A.** Yes, I am.

13          **Q.** You made any refunds?

14          **A.** No, we have not.

15          **Q.** So people who paid thinking  
16 this was a valid assessment before the  
17 Court's TRO, have essentially been given  
18 no recourse, no relief from you, they're  
19 not getting their money back?

20          **A.** Right now, the standard  
21 practice for the Great Bay for all  
22 assessments that have been paid, if there  
23 is a dispute, they pay the assessment and  
24 then the dispute. If, in fact, they  
25 prevail, we will give them a credit



Cross - Mr. Doyle

1 towards future dues so that they don't  
2 lose any money.

3 Q. What do you mean if "they  
4 prevail"? You mean if they sue you and  
5 they --

6 A. If there is a dispute -- okay,  
7 Section 8.2 of the Supplementary --

8 Q. No, no, no, sir. Sir, I'm not  
9 asking you a specific section. I'm asking  
10 you what you mean --

11 ATTORNEY WENTZEL: Your  
12 Honor, can he finish his answer, please?

13 THE COURT: Well, Attorney  
14 Wentzel, hold on. Hold on. That was not  
15 her question.

16 So, Mr. Doyle, please answer the  
17 question.

18 THE WITNESS: Ask the  
19 question, again, please.

20 **BY ATTORNEY TANKENSON HODGE:**

21 Q. My question was, when you say  
22 if "they prevail" they get a credit, do  
23 you mean if they prevail in suing you and  
24 winning a case?

25 A. Prevail is the language in the

Cross - Mr. Doyle

1 Agreement.

2 Q. But what do you mean by that?

3 A. What do I mean?

4 Q. Yes, do you mean to prevail  
5 they have to win a lawsuit against you?

6 A. Prevail would mean that there  
7 would have to be some kind of judgement  
8 with respect to the propriety of the  
9 charge that we have assessed them.

10 Q. By a judgement you mean a  
11 court judgement?

12 A. Yes.

13 ATTORNEY TANKENSON HODGE:  
14 All right. That's all I have, judge.

15 THE COURT: All right. Very  
16 well. Thank you.

17 Any redirect examination,  
18 Attorney Wentzel?

19 ATTORNEY WENTZEL: Yes, Your  
20 Honor.

21 Can you put back up Defendant's  
22 Exhibit U, please. Your Honor, can we  
23 show Defendant's Exhibit U?

24 THE COURT: Yes.

25 ATTORNEY TANKENSON HODGE:

1 Did you need me to put it up?

2 ATTORNEY WENTZEL: Well,  
3 yeah.

4 THE COURT: Yes.

5 **(Defendant's Exhibit U shared.)**

6 **REDIRECT EXAMINATION**

7 **BY ATTORNEY WENTZEL:**

8 Q. Do you recall that Attorney  
9 Hodge asked you some questions about the  
10 condominium deed that's Defendant's  
11 Exhibit U?

12 A. Yes.

13 Q. All right. Did Attorney Hodge  
14 or anyone from The Neighborhood ever sent  
15 you or GBCOA a copy of this deed?

16 A. I was never --

17 ATTORNEY TANKENSON HODGE:

18 I'm gonna object to the form of the  
19 question, I don't think this witness can  
20 answer whether we sent it to anyone.

21 ATTORNEY WENTZEL: Let me lay  
22 a foundation.

23 When --

24 THE COURT: It's overrule.

25 Overruled. But go ahead, Attorney

1 Wentzel.

2 **BY ATTORNEY WENTZEL:**

3 Q. When significant  
4 correspondence comes into one of the  
5 directors, like something from a lawyer,  
6 is it the practice of the Board of  
7 Directors to share that document and the  
8 information in it?

9 A. The general practice is to  
10 share that information.

11 Q. All right. And, would you  
12 expect based on that practice that if this  
13 deed had ever been sent to someone at the  
14 GBCOA board of directors that it would  
15 have come to your attention?

16 A. Yes.

17 Q. All right. Has Attorney Hodge  
18 produced anything to show you that this  
19 deed was, in fact, sent to someone at  
20 GBCOA?

21 ATTORNEY TANKENSON HODGE:  
22 So, I'm gonna respectfully object in hopes  
23 of avoiding embarrassment to anyone.

24 THE COURT: Okay.

25 ATTORNEY TANKENSON HODGE: I

1 have the e-mail by which I sent this deed  
2 to Attorney Wilczynski. I will produce it  
3 if I need to, but I have a feeling this is  
4 a misunderstanding and I don't think  
5 Attorney Wentzel will want to continue  
6 this line of questions --

7 THE COURT: Okay. Sustained.

8 ATTORNEY TANKENSON HODGE: --  
9 if it's a misunderstanding.

10 THE COURT: Sustained.

11 ATTORNEY WENTZEL: Let's put  
12 up Plaintiff's Exhibit 24.

13 THE COURT: 24 or 23?

14 ATTORNEY WENTZEL: I think  
15 there was some confusion, Your Honor,  
16 about what it was marked.

17 THE COURT: Okay, is it the  
18 same Condominium Deed?

19 ATTORNEY WENTZEL: It was the  
20 one that was actually sent to Abbey Chung.

21 THE COURT: Okay.

22 ATTORNEY WILCZYNSKI: One  
23 moment, Your Honor.

24 THE COURT: Sure.

25 ATTORNEY WILCZYNSKI: Your

1 Honor, I'm sorry I misplaced it. It'll  
2 take me a minute to get it.

3 THE COURT: Sure.

4 **(Brief pause in record.)**  
5 **(Plaintiff's Exhibit 24 shared.)**

6 ATTORNEY WILCZYNSKI:  
7 Hopefully you're seeing this now.

8 THE COURT: Yes.

9 ATTORNEY WILCZYNSKI: There  
10 we go.

11 ATTORNEY WENTZEL: What  
12 exhibit number is this for the record?

13 ATTORNEY WILCZYNSKI: That  
14 was our 24.

15 THE COURT: Okay. Very well.  
16 Plaintiff's Exhibit 24.

17 ATTORNEY WENTZEL: Can you  
18 scroll down a little bit so that Mr. Doyle  
19 can see the whole thing.

20 **BY ATTORNEY WENTZEL:**

21 **Q.** Mr. Doyle, do you recognize  
22 the Defendant's 24 as a copy of the deed  
23 that was sent to the Neighbor- -- to Great  
24 Bay Condominium Owners Association board  
25 of directors, specifically Abbey Chung?

1           **A.** Yes, that looks like a copy of  
2 the deed that was sent to Abbey Chung.

3           **Q.** All right. Was the other deed  
4 that we looked at the same as this deed  
5 that was sent to Abbey Chung?

6           **A.** You should put that up on --  
7 put the other one back up, please. Go  
8 down to the signature lines, please. This  
9 deed as filed looks different with respect  
10 to the signature and with respect to the  
11 notary than the deed that was sent to  
12 Abbey Chung.

13           **Q.** And it's your testimony that  
14 you don't recall having been sent this  
15 particular deed that's Defendant's Exhibit  
16 U? You do recall seeing Plaintiff's  
17 Exhibit 24 that version of the deed;  
18 correct?

19           **A.** I do recall seeing the deed  
20 that was sent to Abbey Chung.

21           **Q.** All right.

22           **A.** At her home.

23           **Q.** And do you know about when it  
24 was sent?

25           **A.** The deed is dated the 20th of

1 September 2017.

2 Q. And you said that was the day  
3 the hurricane struck?

4 A. That was the day Maria struck  
5 St. Thomas.

6 Q. And what's your recollection  
7 about how soon after that did you have  
8 notice of and received a copy of that  
9 deed?

10 A. Within a couple days.

11 Q. All right. Attorney Hodge  
12 asked you about Defendant's Exhibit B and  
13 whether or not it was your view that the  
14 suite owners were responsible to the pay  
15 cost and expenses of CU-1 forever. You  
16 recall that?

17 A. Yes.

18 Q. And do you recall she gave you  
19 a hypothetical, well, if you sold CU-1 to  
20 Bill Gates, is it your position that the  
21 Suite Owners would be responsible for the  
22 cost, do you remember that?

23 A. Yes.

24 Q. Now, to change the  
25 hypothetically -- the hypothetical a



1 little different, hypothetically if you  
2 were negotiating or Van A was negotiating  
3 to transfer the deed to Bill Gates, you  
4 could negotiate a contract and agreement  
5 whereby Mr. Gates agreed to assume those  
6 obligations; correct?

7 **A.** Correct.

8 **Q.** And you could negotiate an  
9 agreement whereby an amendment to the  
10 Declarations would be prepared and filed  
11 with the appropriate authorities to  
12 reflect the agreement you reached with  
13 Bill Gates; correct?

14 **A.** Correct.

15 ATTORNEY WENTZEL: Can we  
16 look at Plaintiff's Exhibit 9?

17 THE COURT: Yes. I need some  
18 clarification, Attorney Wentzel.

19 ATTORNEY WENTZEL: Yes, Your  
20 Honor.

21 THE COURT: So, Exhibit U and  
22 Exhibit 24 seem to be identical, and I  
23 need to understand what was shown to or  
24 given to Miss Chung.

25 ATTORNEY WENTZEL: Okay.

1 Your Honor, the witness testified that in  
2 his view those deeds are not identical,  
3 there are differences in the signatures.  
4 And --

5 THE COURT: Which deeds, the  
6 ones -- Exhibit U and Exhibit 24 that I  
7 have in front of me?

8 ATTORNEY WENTZEL: Yes.  
9 Plaintiff's Exhibit 24 and Defendant's  
10 Exhibit U.

11 THE COURT: They are  
12 identical unless you can show me the  
13 dissimilarity.

14 ATTORNEY WENTZEL: But, Your  
15 Honor, I would be happy to. I don't know  
16 if Mr. Doyle -- I don't know if they can  
17 be displayed side by side.

18 THE WITNESS: Your Honor,  
19 maybe I can help.

20 THE COURT: Yes, please.

21 THE WITNESS: Whichever deed  
22 is up on the screen right now, if you look  
23 at the notary note and Mr. Cutrona's  
24 signature, they don't look the same.  
25 Hence why I thought they were not the same

1 document. Or they were not the same  
2 document -- the text of the document they  
3 maybe the same; I didn't do any  
4 comparison.

5 THE COURT: You're speaking  
6 about the third page, which is also on the  
7 screen?

8 THE WITNESS: Yes.

9 THE COURT: Okay, I don't see  
10 the distinction. They seem to be  
11 identical.

12 ATTORNEY WILCZYNSKI: Your  
13 Honor, please look at the 30 on the date,  
14 or the 20 on the date of the deed that's  
15 in front of you, and then look on the 30  
16 of the other one. Those are not identical  
17 dates, Your Honor.

18 ATTORNEY TANKENSON HODGE: I  
19 respectfully suggest that I do not think  
20 the attorneys should be the handwriting  
21 experts in this case.

22 ATTORNEY WILCZYNSKI:  
23 Unfortunately, the Court asked us --

24 ATTORNEY TANKENSON HODGE: If  
25 I can finish my objection.

1 THE COURT: No, no. One  
2 person at a time. I do not see any  
3 difference between Exhibit U and Exhibit  
4 24.

5 ATTORNEY WILCZYNSKI: Your  
6 Honor, you asked for clarification.

7 ATTORNEY TANKENSON HODGE:  
8 Yes, for clarification --

9 THE COURT: Exactly what is  
10 the difference between them?

11 ATTORNEY WILCZYNSKI: The  
12 difference is in the signatures, Your  
13 Honor. In the handwriting on both  
14 documents these are in the nomenclature,  
15 it is -- these are not identical  
16 originals. Somebody must have signed two  
17 deeds. When two deeds were done, it's  
18 gonna have the same information, it's  
19 gonna look very similar, but you can see  
20 quite clearly that, for instance, the word  
21 "President" here in this one and the word  
22 "President" here --

23 THE COURT: The word  
24 president where, in which exhibit?

25 ATTORNEY WILCZYNSKI: Your

Redirect - Mr. Doyle

1 Honor, right now I am showing you our  
2 Exhibit J -- I'm sorry, our Exhibit 24.  
3 And this is the other one. And this --  
4 that word right there is different than --  
5 it says the same thing, Your Honor, they  
6 are very similar.

7 ATTORNEY TANKENSON HODGE: So  
8 essentially counsel is suggesting they are  
9 duplicate originals, one of which was sent  
10 to Miss Chung and one of which was  
11 recorded in the Recorder of Deeds Office.

12 ATTORNEY WILCZYNSKI: Five  
13 months later.

14 ATTORNEY TANKENSON HODGE:  
15 And the suggestion with this witness that  
16 the recorded copy was not provided to  
17 Great Bay is of great concern, because as  
18 I indicated, I have my transmittal to  
19 Attorney Wilczynski, and I didn't mark it  
20 as an exhibit because I didn't think we  
21 needed to demonstrate that, but I have it  
22 for the record if we need it.

23 ATTORNEY WENTZEL: What the  
24 witness --

25 ATTORNEY WILCZYNSKI: Well,

1 absolutely, Maria, you sent it to me after  
2 the deed was recorded in March of 2018.  
3 Absolutely. But when was the deed  
4 created?

5 ATTORNEY TANKENSON HODGE:  
6 No, sorry. Excuse me. The point was,  
7 that this witness was asked whether he had  
8 ever seen the recorded deed and whether he  
9 wouldn't have expected to see it if it was  
10 sent to his counsel. And I thought that  
11 was a suggestion on the part of Great Bay  
12 that it was not sent to his counsel, when  
13 in fact it was sent within days of being  
14 recorded.

15 ATTORNEY WILCZYNSKI: Of  
16 being recorded.

17 ATTORNEY TANKENSON HODGE:  
18 Yes.

19 ATTORNEY WILCZYNSKI: Five  
20 months later after the -- the property tax  
21 had finally been paid.

22 ATTORNEY TANKENSON HODGE:  
23 This is obviously argument, but the  
24 point --

25 ATTORNEY WENTZEL: Look, I

Redirect - Mr. Doyle

1 thought the Court wanted an explanation  
2 for why Mr. Doyle said he had not seen the  
3 recorded deed, and his explanation is,  
4 because it's a different deed -- the one  
5 he saw is the one that was sent to Abbey  
6 Chung in September on the day of the  
7 hurricane.

8 The Court's concern was, how  
9 could you meet all the time and you've  
10 never seen this deed? And his testimony  
11 is, he saw the deed in September within a  
12 day or two after it was sent, he just  
13 recognizes it as a different deed.

14 ATTORNEY TANKENSON HODGE:  
15 So, excuse me, but the point that was the  
16 subject of his testimony was, that the  
17 recorded deed was presented to the witness  
18 for questioning, and he said he had never  
19 seen that.

20 ATTORNEY WENTZEL: Exactly.

21 THE COURT: Precisely.

22 ATTORNEY TANKENSON HODGE:

23 Which cause a legitimate concern.

24 ATTORNEY WENTZEL: Exactly.

25 THE COURT: Okay. So which

**Redirect - Mr. Doyle**

1 one is it -- so which one is, did he see  
2 what was shown earlier which was a copy of  
3 the recorded deed on the cross-examination  
4 of Attorney Hodge? Did he see the deed or  
5 did not see the deed? He testified he had  
6 not seen it.

7 **BY ATTORNEY WENTZEL:**

8 **Q.** Well, Mr. Doyle, which one do  
9 you recall seeing?

10 **A.** I know I saw the deed that was  
11 sent to Abbey Chung.

12 **Q.** Is that Defendant's 24 -- I'm  
13 sorry, Plaintiff's 24?

14 **A.** I testified that I did not  
15 recall seeing the deed that was recorded.

16 You have to understand, Your  
17 Honor, in 2018 we were in the midst --  
18 this was -- this happened, it was  
19 important without a doubt, but we were in  
20 the midst of redoing the Condominium after  
21 the hurricanes. This deed wasn't going  
22 anywhere, the courts were closed, and we  
23 were busy trying to get the Club open  
24 again, and getting the people back into  
25 their jobs. I mean, this was not --



**Redirect - Mr. Doyle**

1 THE COURT: No, I understand  
2 that, but you're saying now that you did,  
3 in fact, see the deed before today?

4 THE WITNESS: Yeah, I saw the  
5 deed that was sent to Abbey before today,  
6 yes, Your Honor.

7 THE COURT: Okay. All right.  
8 All right, you can continue,  
9 Attorney Wentzel. Thank you.

10 ATTORNEY WENTZEL: All right.  
11 Plaintiff's Exhibit 9, I believe, was what  
12 the Court permitted me to show?

13 THE COURT: Yes.

14 **BY ATTORNEY WENTZEL:**

15 Q. And I had asked about,  
16 hypothetically, if you were selling the  
17 CU-1 or if NA was selling CU-1 to Bill  
18 Gates, you could negotiate an agreement  
19 that Bill Gates agreed to pay the expenses  
20 and file an amendment to the Declaration.  
21 That you could do hypothetically, correct,  
22 Mr. Doyle?

23 A. Yes.

24 Q. Is that exact, in fact, what  
25 you were negotiating with CU-1 at the time

1 they just signed and sent the deed to you?

2 ATTORNEY TANKENSON HODGE: I  
3 object to the -- I object to this. The  
4 testimony, or at least the affidavits  
5 indicate that there are multiple parties  
6 involved in negotiations, so I don't think  
7 this witness should be allowed to answer  
8 that question.

9 **BY ATTORNEY WENTZEL:**

10 Q. Do you have personal knowledge  
11 of the negotiations about a possible  
12 transfer of CU-1 from NA to the GBCOA?

13 A. Yes, I do.

14 Q. What involvement did you have  
15 in those issues?

16 THE COURT: Overrule.

17 Continue.

18 THE WITNESS: I can continue  
19 to testify, Your Honor?

20 THE COURT: Yes, you can  
21 continue.

22 THE WITNESS: Sometime in  
23 early July the other Doyle --

24 Q. What year?

25 A. July of 2017. The other Doyle

**Redirect - Mr. Doyle**

1 and Mr. Cutrona stepped back from  
2 negotiations. And Mark Gerisch who is  
3 also a board member of NA, and Abbey Chung  
4 and I were engaged in the discussion and  
5 negotiations through some time in late  
6 June early July 'til those discussions  
7 ended.

8 **Q.** When did they end?

9 **A.** They ended -- I think we as a  
10 board decided we didn't want to move  
11 forward sometime in late August.

12 **Q.** And explain to the Court the  
13 reasons why GBCOA decided not to move  
14 forward.

15 **ATTORNEY TANKENSON HODGE:** So  
16 I'm gonna object to this. I think this is  
17 irrelevant to what we are talking about  
18 now, and especially since Attorney Wentzel  
19 didn't want to allow me to offer evidence  
20 about the merits. I don't think we should  
21 have this testimony either.

22 **ATTORNEY WENTZEL:** It has to  
23 be consistent. She went into it in great  
24 detail about the transfer of the deed.  
25 This is redirect; it should be allowed.

**Redirect - Mr. Doyle**

1 THE COURT: Overrule.

2 THE WITNESS: Basically, the  
3 discussions broke down over the -- what's  
4 the word I want to use? Disposition of  
5 the litigation proceeds that were derived  
6 from lawsuits in connection with the  
7 common area that GBCOA was responsible.  
8 We're talking about, in round numbers,  
9 \$700,000. Four hundred and some odd  
10 thousand dollars is on deposit in Miss  
11 Hodge's whatever account, and the rest NA  
12 had and they were -- we had agreed to  
13 allow them to use some of that to pay  
14 their counsel. The NA wanted to basically  
15 rebate those moneys to their owners -- to  
16 their members, and then wanted GBCOA to  
17 take the economic responsibility of paying  
18 the dues on CU-1 in perpetuity for all the  
19 membership. And we thought that was  
20 grossly inequitable and we couldn't reach  
21 an agreement.

22 **BY ATTORNEY WENTZEL:**

23 Q. Had you reached an agreement  
24 hypothetically, did the Members  
25 Association of GBCOA have the ability to

Redirect - Mr. Doyle

1 amend the Declaration that says the suite  
2 owners have to pay CU-1 fees?

3 ATTORNEY TANKENSON HODGE:  
4 Well, objection, Your Honor, we've already  
5 determined there's conflicting provisions  
6 according to Mr. Doyle himself.

7 THE COURT: Yes.

8 ATTORNEY TANKENSON HODGE: So  
9 I'm not sure what's the purpose of this --

10 ATTORNEY WENTZEL: I do want  
11 to -- I'll get to that in a second, Your  
12 Honor. But I do want to establish -- and  
13 I'll be more direct about it.

14 THE COURT: Okay.

15 ATTORNEY WENTZEL: Can we  
16 show Mr. Doyle from Exhibit 9 page 14 --

17 THE COURT: Yes.

18 **(Plaintiff's Exhibit 9 shared.)**

19 ATTORNEY WILCZYNSKI: You  
20 should see page 14 --

21 ATTORNEY WENTZEL: Sixteen.  
22 I'm sorry. Sixteen. Paragraph 16.

23 ATTORNEY WILCZYNSKI:  
24 Paragraph 16 or page 14?

25 ATTORNEY WENTZEL: That's it

1 right there. You got. Paragraph 16,  
2 Amendments.

3

4 THE WITNESS: Page 16, I'm at  
5 14.

6 **BY ATTORNEY WENTZEL:**

7 Q. It's page 14 paragraph 16.

8 A. Okay. I see that.

9 Q. Okay. And that's titled  
10 "Amendments"; correct?

11 A. Correct.

12 Q. And could you just read the  
13 first couple of sentences for the benefit  
14 of the Court.

15 A. "An amendment to this  
16 Declaration may be proposed either by the  
17 board of directors of the Members  
18 Association or a Member. It may be  
19 considered at any meeting of the Members,  
20 regular or special, of which due notice  
21 has been given according to the Bylaws.  
22 Passage shall be by the affirmative vote  
23 of Members casting not less than fifty-one  
24 percent (51%) of the total number of  
25 voting interests cast either in person or

**Redirect - Mr. Doyle**

1 by proxy at a meeting duly called and held  
2 for such purpose."

3 Q. All right. So if you had  
4 reached agreement with NA on the transfer  
5 of CU-1, and the transfer of the financial  
6 obligation, you could have proposed an  
7 amendment and put it to a vote of your  
8 members; correct?

9 A. Correct.

10 Q. And a similar majority --

11 ATTORNEY TANKENSON HODGE:  
12 Respectfully, Your Honor, this is -- these  
13 are leading questions and this is Mr.  
14 Wentzel's own client.

15 ATTORNEY WENTZEL: It's  
16 almost five o'clock and I'm just trying to  
17 get the info for the Court. I can go  
18 slower.

19 ATTORNEY TANKENSON HODGE:  
20 I'm not asking for slower I'm just asking  
21 for leading.

22 THE COURT: So rephrase the  
23 question.

24 **BY ATTORNEY WENTZEL:**

25 Q. Okay. How many -- what would

1 have been required for the members to  
2 approve an amendment to the Declaration  
3 that shifted financial responsibility from  
4 the suite owners to the GBCOA and to all  
5 the members?

6 **A.** We would have needed 51  
7 percent of the total number of voting  
8 members. We had 1260, so we needed half  
9 of that plus one to get to 51 percent.

10 **Q.** And are you aware of whether  
11 as part of these negotiations over the  
12 transfer, The Neighborhood Association put  
13 the issue of the transfer to a vote of its  
14 members?

15 **A.** I am aware that the  
16 Neighborhood Association put the issue of  
17 transferring this to a vote of its  
18 members.

19 **Q.** All right. And so had a deal  
20 been consummated and the Declarations  
21 amended, would the obligation of the Suite  
22 Owners to pay CU-1 have existed forever?

23 **A.** Not if we approved an  
24 amendment to the Declaration.

25 **Q.** All right. Attorney Hodge



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1 asked you about whether you looked at the  
2 Virgin Islands Condominium Act in  
3 connection with your assessment of the  
4 Suite Owners' responsibility to pay the  
5 CU-1 assessments, do you recall that?

6 **A.** Yes.

7 **Q.** And she read some part of the  
8 Condominium Act that wasn't put on the  
9 screen, but the gist of it was, that all  
10 members of the association have to pay an  
11 equal share of the common expenses of the  
12 property. Do you recall that?

13 **A.** I recall that.

14 ATTORNEY TANKENSON HODGE: I  
15 object to the form -- respectfully, I  
16 object to the form of the question, its  
17 leading and it misstates the section of  
18 the code that I cited.

19 THE COURT: Is it Section  
20 909 --

21 ATTORNEY TANKENSON HODGE: I  
22 never said anything about equal shares,  
23 Your Honor.

24 THE COURT: Is it Section  
25 909?

1                   It is. It's Section 909 --  
2 Title 28 V.I.C. Section 909.

3                   ATTORNEY WENTZEL: Can we  
4 have that language put up on the screen  
5 for the witness, Your Honor?

6                   THE COURT: Yes, please.  
7 Yes.

8                   ATTORNEY TANKENSON HODGE:  
9 It's --

10                  ATTORNEY WILCZYNSKI: Maria  
11 would have to do that.

12                  ATTORNEY TANKENSON HODGE:  
13 I'll give it a try.

14                  ATTORNEY WILCZYNSKI: Well --  
15 yeah. Hold on let me -- I'm sorry,  
16 Attorney Hodge would have to do that.

17                  **(Defendant's Exhibit P shared.)**

18                  ATTORNEY TANKENSON HODGE: It  
19 is right there in front of you.

20                  THE COURT: That's 905.

21                  ATTORNEY TANKENSON HODGE: It  
22 should be 909.

23                  THE COURT: Oh, I'm sorry.  
24 I'm sorry.

25                  **BY ATTORNEY WENTZEL:**

1           Q. Okay, are you looking at that  
2 -- can you read that, Mr. Doyle?

3           A. "VI Code Provisions." *Title*  
4 *28 of the V.I. Code Section 909, the*  
5 *common profits of the property shall be*  
6 *distributed among, and the common expenses*  
7 *shall be charged to, the apartment owners*  
8 *according to the percentage of undivided*  
9 *interests in the common areas and*  
10 *facilities. "Those undivided interests*  
11 *are required to be the percentages*  
12 *expressed in the Declaration."*

13           Q. All right. Thank you.

14           ATTORNEY WILCZYNSKI: However  
15 that -- the second part of it is not from  
16 the code section.

17           ATTORNEY TANKENSON HODGE:  
18 No, it's from a different code and  
19 section.

20           ATTORNEY WENTZEL: I think  
21 the Court can see it.

22           THE COURT: Yes, I see. I  
23 see.

24 **BY ATTORNEY WENTZEL:**

25           Q. Mr. Doyle, are the expenses

1 for ownership and operation of CU-1 common  
2 expenses?

3 **A.** No, they are not. CU-1 is not  
4 a common expense of the Great Bay  
5 Condominium Owners Association. It's a  
6 unit.

7 **Q.** And the Declarations have a  
8 different obligation for responsibility to  
9 pay those expenses; correct?

10 **A.** Yes.

11 ATTORNEY TANKENSON HODGE:  
12 Objection. Leading.

13 ATTORNEY WENTZEL: We've  
14 already testified to it. It's in the  
15 Fifth Amendment --

16 ATTORNEY TANKENSON HODGE:  
17 Okay, then we don't need to hear it with a  
18 leading question.

19 THE COURT: Okay. All right.  
20 Sustained.

21 ATTORNEY WENTZEL: All right,  
22 can we take a look at Plaintiff's Exhibit  
23 3 again?

24 THE COURT: Yes, you may.

25 **(Plaintiff's Exhibit 3 shared.)**

1                   ATTORNEY WILCZYNSKI: Where  
2 would you like to go?

3                   ATTORNEY WENTZEL: I would  
4 like to go to page two paragraph five.  
5 But before that, Mark -- I'm sorry, Mark.  
6 Let me take it a step at a time. Let's go  
7 to the bottom of page one paragraph one.

8                   ATTORNEY WILCZYNSKI: It's on  
9 there.

10 **BY ATTORNEY WENTZEL:**

11                   **Q.** All right, Mr. Doyle, I  
12 believe you testified previously that the  
13 Fifth Amendment is the one that submitted  
14 Building G to the Condominium; correct?

15                   **A.** Correct.

16                   **Q.** All right. It's not the  
17 Fourth Amendment that you were shown on  
18 cross, it's the Fifth Amendment; correct?

19                   **A.** Correct.

20                   **Q.** All right. Now, if you go to  
21 the page two, paragraph two, this is the  
22 provision of the Fifth Amendment that  
23 submits Building G and the Commercial  
24 Unit; correct?

25                   ATTORNEY TANKENSON HODGE:

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1 Can I repeat the point that there is --  
2 these are all leading questions. This is  
3 exactly the way you would cross-examine --

4 ATTORNEY WENTZEL: I'll  
5 withdraw it and I'll ask a different one.

6 Could you please read paragraph  
7 two, Mr. Doyle.

8 **A.** *Floor Plans of Building G of*  
9 *Phase Six(6) of the Condominium, certified*  
10 *by the Brian Moseley and Associates, are*  
11 *set forth in Exhibit "B" attached hereto,*  
12 *including the location and identification*  
13 *numbers of each Residence. Building G*  
14 *will contain twelve(12) Residences and*  
15 *one(1) Commercial Unit, is five(5) stories*  
16 *tall and is constructed of concrete*  
17 *masonry and drywall. The twelve(12)*  
18 *Residences located in Building G shall be*  
19 *designated as, quote, "Two Bedroom*  
20 *Suites". The occupancy of Two Bedroom*  
21 *Suites, inclusive of children, shall be*  
22 *limited to six(6) people at a time.*

23 **Q.** All right. And can we scroll  
24 down to paragraph five. Could you read  
25 that one.

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1           **A.** All Owners of Residences that  
2           are designated as Two Bedroom Suites  
3           shall, in addition to being Members of the  
4           Condominium Association, be mandatory  
5           members of the Neighborhood Association  
6           whose sole purpose is to own operate  
7           Commercial Unit 1, which shall be conveyed  
8           by the Declarant to the Neighborhood  
9           Association and utilized for the exclusive  
10          benefit of the occupants from time to time  
11          of Two Bedroom Suites, whether or not such  
12          occupants are Members of the Neighborhood  
13          Association, and as more particularly  
14          described in the organizational governing  
15          documents of the Neighborhood Association.  
16          As a member of the Neighborhood  
17          Association, Owners of Two Bedroom Suites  
18          are responsible for all costs and expenses  
19          of ownership and operation of the  
20          Commercial Unit 1, comma, including but  
21          not limited to any services that it may  
22          elect to provide. The furnishings located  
23          --

24               **Q.** All right. That's enough  
25               unless the Court wants to -- you to read

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1 the rest.

2 THE COURT: No, that's fine.

3 Thank you.

4 **BY ATTORNEY WENTZEL:**

5 Q. And so, under the Fifth  
6 Amendment to the Condominium Declaration,  
7 is CU-1 a common element?

8 A. No.

9 ATTORNEY TANKENSON HODGE:  
10 Object to the form of the question.  
11 There's no contention it's a common  
12 element, it's a unit.

13 Q. Is -- are the -- well, I'm  
14 about to get there.

15 THE COURT: Okay. Overrule.  
16 Continue.

17 Q. And are the expenses of  
18 ownership and operation of CU-1 under the  
19 Fifth Amendment that submitted this unit  
20 to the Condominium, are those common  
21 expenses?

22 A. No.

23 Q. Who are they expenses of?

24 A. They are expenses of the  
25 Owners of Two Bedroom Suites who are



1 members of The Neighborhood Association.

2 Q. So does that provision of the  
3 Virgin Islands Code that Attorney Hodge  
4 read to you on cross-examination, does  
5 that have anything to do with the CU-1  
6 expenses?

7 ATTORNEY TANKENSON HODGE:  
8 So, I'm gonna object to this. This is  
9 definitely calling for a legal conclusion  
10 on the part of the witness. I don't think  
11 he can answer that.

12 THE COURT: Overrule.

13 THE WITNESS: I don't see how  
14 that code section, which refers to common  
15 expenses, could apply to CU-1 which wasn't  
16 a common expense but a commercial unit  
17 owned by each of the members of The  
18 Neighborhood Association.

19 ATTORNEY WENTZEL: All right.  
20 And can we have -- let's go to the date  
21 that -- at the top, Mr. Wilczynski, so  
22 that the witness can refresh his  
23 recollection about when this was filed.

24 ATTORNEY WILCZYNSKI: Are you  
25 talking about the top of this document?

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1 ATTORNEY WENTZEL: Yes, sir.  
2 Thank you.

3 ATTORNEY WILCZYNSKI: There  
4 you go.

5 **BY ATTORNEY WENTZEL:**

6 Q. All right. And you previously  
7 testified to this, Mr. Doyle, but what is  
8 the date this Fifth Amendment was filed  
9 with the Recorder of Deeds for St. Thomas?

10 A. July 18, 2006.

11 Q. All right. And so that's the  
12 date that the Commercial Unit was  
13 submitted to the Condo along with Building  
14 G; correct?

15 A. Correct.

16 ATTORNEY WENTZEL: Now can we  
17 take a look at Defendant's Exhibit 3?

18 THE COURT: Yes.

19 ATTORNEY WILCZYNSKI:  
20 Defendant's Exhibit 3?

21 ATTORNEY WENTZEL: I'm sorry,  
22 Mr. Wilczynski, I meant Defendant's  
23 Exhibit E. It's the Third Amendment.

24 **(Defendant's Exhibit E shared.)**

25 ATTORNEY WILCZYNSKI: You

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1 should have it.

2 ATTORNEY WENTZEL: We want to  
3 look at the stamp on the top of the first  
4 page. Okay, there are actually two  
5 stamps, but the one I want you to look at  
6 is the official records of St. Thomas.  
7 Can you enlarge it?

8 ATTORNEY WILCZYNSKI: Yes.

9 THE WITNESS: The date on  
10 that is December, it looks, 29th of 2005.

11 **BY ATTORNEY WENTZEL:**

12 **Q.** All right. That's seven  
13 months before CU-1 was actually submitted  
14 to the Condominium; correct?

15 **A.** Correct.

16 **Q.** And this Third Amendment, what  
17 was it submitting to the Condominium?

18 If we could scroll down.

19 ATTORNEY WILCZYNSKI: How  
20 far?

21 ATTORNEY WENTZEL: I don't  
22 have the document myself.

23 THE WITNESS: Keep going.

24 ATTORNEY WENTZEL: Keep  
25 going.

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1 ATTORNEY WILCZYNSKI: I'm at  
2 the bottom of page one.

3 THE WITNESS: Keep going.

4 **BY ATTORNEY WENTZEL:**

5 Q. Okay. If you look at  
6 paragraph two, the first sentence. Could  
7 you read the first sentence about what  
8 building this relates to.

9 A. *Annexed hereto and made part*  
10 *of as Exhibit "A" is the list of all such*  
11 *Residence Interests in Building H which*  
12 *will constitute the fifth(5th) phase of*  
13 *the Residence Interests.*

14 Q. All right. And there are two  
15 buildings that have the suites, I believe,  
16 you heard the testimony from Mr. Cutrona,  
17 G and H; correct?

18 A. Correct.

19 Q. And which one has CU-1?

20 A. "G."

21 Q. All right. And so, this  
22 Amendment, Third Amendment was then later  
23 amended six months later by the Fourth  
24 Amendment to the Supplemental Declaration;  
25 correct?

1                   ATTORNEY TANKENSON HODGE:  
2           Objection. Leading.

3                   THE COURT: Sustained.

4           **BY ATTORNEY WENTZEL:**

5                   **Q.** Was this Third Amendment to  
6           the Supplemental Declaration later  
7           amended?

8                   **A.** Yes.

9                   ATTORNEY WENTZEL: All right,  
10          can we look at Plaintiff's Exhibit 4?

11                  THE COURT: Yes, you may.

12                  **(Plaintiff's Exhibit 4 shared.)**

13                  ATTORNEY WILCZYNSKI: You are  
14          there.

15                  **Q.** Okay, this is a subsequent  
16          amendment to the Supplementary  
17          Declaration; correct?

18                  **A.** Correct.

19                  **Q.** We've just looked at the Third  
20          Amendment which is what Attorney Hodge had  
21          showed you, and this is the Fourth  
22          Amendment that amended the Third  
23          Amendment; right?

24                  ATTORNEY TANKENSON HODGE:  
25          Objection. Leading.

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THE COURT: Sustained.

**BY ATTORNEY WENTZEL:**

**Q.** What does -- what's your understanding of what the Fourth Amendment does?

**A.** The Fourth Amendment superceded in some places what was articulated in the Third Amendment.

**Q.** All right. And which building was submitted with the Fourth Amendment to the Supplementary Declaration?

**A.** If you bring it up. Stop. This is Building G.

**Q.** And, you said this is the building that actually has CU-1?

**A.** Yes, Gardenia.

ATTORNEY WENTZEL: All right. Thank you, Mr. Wilczynski.

Can you we look at Plaintiff's Exhibit 8?

THE COURT: Yes.

**(Plaintiff's Exhibit 8 shared.)**

ATTORNEY WENTZEL: And in particular --

ATTORNEY WILCZYNSKI: We are

1 there.

2 ATTORNEY WENTZEL: I got to  
3 find my place. Okay, on page 12.

4 ATTORNEY WILCZYNSKI: Okay.

5 ATTORNEY WENTZEL: And, for  
6 the record, this is the Bylaws of The  
7 Neighborhood Association.

8 THE COURT: Okay.

9 **BY ATTORNEY WENTZEL:**

10 **Q.** Do you recall Attorney Hodge  
11 asking you questions about this document  
12 on cross-exam?

13 **A.** Yes.

14 **Q.** On page 12 Article 10,  
15 "Assessments, Charges and Collections,  
16 Section 1." Attorney Hodge read the first  
17 sentence of this one, you recall that?

18 **A.** Yes.

19 **Q.** And can you read it, but also  
20 include the second sentence for  
21 completeness.

22 **A.** *Assessments shall be made*  
23 *against the Members at the sole discretion*  
24 *of the Board. The Assessments shall be*  
25 *made in the amount not less than those*

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1       *required to provide funds in advance for*  
2       *payment of all anticipated current*  
3       *operating expenses and for all of the*  
4       *unpaid operating expenses previously*  
5       *incurred by the Association.*

6               **Q.** And if it -- did The  
7       Neighborhood Association board assess the  
8       members of The Neighborhood Association  
9       for the CU-1 expenses for 2017 through  
10       2021?

11               **A.** No, the CU-1 board did not  
12       assess its members for the operating  
13       expenses from 2017 to today.

14               **Q.** And as the governing member of  
15       the Members Association -- the governing  
16       association of the entire Club, who has  
17       the power to enforce all the governing  
18       documents?

19                       ATTORNEY TANKENSON HODGE:  
20       Objection. Objection, that calls for a  
21       legal conclusion. I don't think this  
22       witness can answer that.

23                       ATTORNEY WENTZEL: Well, he's  
24       testified to his review of -- we read this  
25       earlier, Your Honor, I'm happy to go back



1 to the document.

2 ATTORNEY TANKENSON HODGE:  
3 Yeah, I'm not sure why we would hearing  
4 again what was put in already, but I dont'  
5 think this --

6 ATTORNEY WENTZEL: Because  
7 we're clearing up --

8 ATTORNEY TANKENSON HODGE:  
9 Excuse me, if I could just finish my  
10 objection. If we've heard it already I  
11 don't know why we need it to hear it  
12 again, but I don't think this witness is  
13 gonna be in a position to tell who is in  
14 charge of enforcing what, and certainly  
15 not on the basis of his reviewing the  
16 documents when he's now acknowledged that  
17 he only reviewed some or only paid  
18 attention to some of the documents.

19 THE COURT: What do you mean  
20 by enforce -- what do you mean by, who is  
21 enforcing, Attorney Wentzel?

22 ATTORNEY WENTZEL: Okay, so  
23 the witness just testified that even  
24 though Section 1 says that the board of  
25 The Neighborhood Association shall, the

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1 assessments --

2 THE COURT: Right.

3 ATTORNEY WENTZEL: -- shall  
4 be made. Then he testified, the board of  
5 the Neighborhood Association did not  
6 comply with that. It did not assess the  
7 expenses for 2017 to 2021. And, one of  
8 the issues that we previously discussed on  
9 direct was the ability of the GBCOA to  
10 issue those assessments enforcing the  
11 governing documents.

12 THE COURT: Right. And  
13 ultimately the four different options of  
14 consequences in the event the invoices  
15 were not paid, is that where you are going  
16 with this?

17 ATTORNEY WENTZEL: No, I'm  
18 just going to why did GBCOA issued these  
19 assessments to the Suite Owners.

20 THE COURT: And who would  
21 enforce these assessments in the event the  
22 Owners refuse to pay them?

23 ATTORNEY WENTZEL: There are  
24 the four options Your Honor mentioned.

25 THE COURT: Okay. So it's

1 allowed. It's allowed. Overrule,  
2 Attorney Hodge.

3 ATTORNEY TANKENSON HODGE:  
4 Very well, judge, but this language  
5 doesn't seem to relate to that. I mean,  
6 to the extent that counsel is asking who  
7 has the authority to force The  
8 Neighborhood Association to make these  
9 assessments if they don't make them,  
10 that's really a different question  
11 than whether or not --

12 ATTORNEY WENTZEL: I didn't  
13 ask that.

14 ATTORNEY TANKENSON HODGE:  
15 Sorry. Well, I thought that was exactly  
16 what -- then I object to the form of the  
17 question.

18 ATTORNEY WENTZEL: No, it's  
19 not. No it's not.

20 ATTORNEY TANKENSON HODGE:  
21 Then I don't understand it.

22 THE COURT: Okay. So, ask  
23 the question again one more time, please.

24 ATTORNEY WENTZEL: Okay,  
25 we're gonna have to take a look at the

1 Articles of Incorporation of the Great Bay  
2 Condominium Association, which is Exhibit  
3 5, Plaintiff's Exhibit 5.

4 ATTORNEY WILCZYNSKI: There.

5 THE COURT: Yes.

6 **(Plaintiff's Exhibit 5 shared.)**

7 ATTORNEY WILCZYNSKI: I can  
8 go to the top.

9 ATTORNEY WENTZEL: All right.  
10 And objects -- go to Article 2 on page  
11 one.

12 And this relates to the objects  
13 and purposes of who, Mr. Doyle?

14 **A.** For -- this is the object and  
15 purposes for the GBCOA.

16 **Q.** All right. And paragraph "B"  
17 of Article 2, can you read what that  
18 object and purpose of GBCOA is?

19 **A.** *To promote the general welfare*  
20 *of the Association and its Members and to*  
21 *enforce the provisions of the the*  
22 *Declaration, Bylaws, Rules and Regulations*  
23 *of Great Bay Condominium as the same may*  
24 *be amended from time to time.*

25 **Q.** And you've already testified

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1 just a minute ago the Declaration require  
2 the suite owners to pay the cost and  
3 expenses of CU-1?

4 **A.** Yes.

5 ATTORNEY TANKENSON HODGE:  
6 Objection. Leading.

7 THE COURT: Was that his  
8 testimony?

9 THE WITNESS: I said, yeah --

10 ATTORNEY WENTZEL: It was  
11 read in the Fifth Amendment just a moment  
12 ago, Your Honor.

13 THE COURT: Okay. All right.  
14 Overrule.

15 **BY ATTORNEY WENTZEL:**

16 **Q.** Is your answer yes?

17 **A.** Yes.

18 ATTORNEY WENTZEL: Let's go  
19 to Defendant's Exhibit F.

20 **(Defendant's Exhibit F shared.)**

21 ATTORNEY WILCZYNSKI: There.

22 THE COURT: Yes.

23 ATTORNEY WENTZEL: And page  
24 four, please. And for the record, this is  
25 the Fourth Amendment to the Declaration,

1 and it's dated December 9, 2005.

2 ATTORNEY WILCZYNSKI: We're  
3 on page four.

4 **BY ATTORNEY WENTZEL:**

5 Q. On page four is the  
6 continuation of paragraph five, and do you  
7 recall that Attorney Hodge read at the top  
8 of page four this paragraph that starts,  
9 "Except for the Declarant"?

10 A. Yes.

11 Q. Are you oriented there?

12 A. I am. I got that on the  
13 screen.

14 Q. Okay. And do you recall  
15 Attorney Hodge had you read the sentence  
16 that says, "The Declarant or an Owner of a  
17 Commercial Unit may also convey a  
18 Commercial Unit, or any subdivision  
19 thereof in the case of Declarant, to the  
20 Association for no or nominal  
21 consideration without the consent of any  
22 Owner or the Association, and the  
23 Association shall be obligated to accept  
24 such conveyance." Do you recall her  
25 asking you about that?

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1           **A.** I recall her asking me about  
2 that.

3           **Q.** All right, can you read the  
4 next sentence up this provision for  
5 completeness.

6           **A.** *A Commercial Unit will be only*  
7 *transferred to the Association free of*  
8 *service contracts or other obligations*  
9 *other than as provided in the Declaration,*  
10 *By-laws and Rules and Regulations, as*  
11 *amended from time to time.*

12           **Q.** Were there any obligations of  
13 CU-1 that existed on the unit when Mr.  
14 Cutrona signed the deed and sent it to  
15 Abbey Chung in September of 2017?

16           **A.** There were multiple --

17                   ATTORNEY TANKENSON HODGE:  
18 Your Honor, now I am confused, are we at  
19 the point where it's agreed that we will  
20 be permitted to offer testimony on the  
21 merits, which is fine with me then it  
22 should be mutual, or are we at the point  
23 where I thought that I was stopped by Mr.  
24 Wenzel's objection and not permitted to go  
25 into the merits, because this provision

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1 obviously has to do with the fact that we  
2 contend the deed is valid and didn't  
3 require the consent of the Association?

4 ATTORNEY WENTZEL: It's the  
5 very next sentence that -- to the one she  
6 read on cross.

7 ATTORNEY TANKENSON HODGE:  
8 But I thought I wasn't permitted to go  
9 there by your objection.

10 THE COURT: Okay, one person  
11 at a time. Okay, Attorney Wentzel, what  
12 did you say?

13 ATTORNEY WENTZEL: I said  
14 much of her cross went to the issue of  
15 their right to transfer the CU-1 and, Your  
16 Honor, I objected and said, I thought we  
17 weren't doing merits.

18 THE COURT: Right.

19 ATTORNEY WENTZEL: I was  
20 overruled. She was allowed to ask about  
21 it. I'm happy, Your Honor, to delay this  
22 issue to the later merits trial, but for  
23 completeness I wanted the witness to read  
24 this for the Court that there is more to  
25 this story than what Attorney Hodge said.



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1 THE COURT: Okay, overrule.  
2 You may continue, Attorney Wentzel.

3 **BY ATTORNEY WENTZEL:**

4 Q. All right. Were there any  
5 obligations of the CU-1 at the time Mr.  
6 Cutrona signed the deed and sent it to  
7 Abbey Chung?

8 A. Yes, there were. There were  
9 property taxes that were not paid until  
10 March of 2018. The termination agreement  
11 with the -- the RG 101 contract was  
12 executed after the initial transfer was  
13 made the day of the hurricane that Maria  
14 hit. It was executed on September 22nd as  
15 of, but it was executed after the fact.

16 The obligations under the  
17 ratification agreement were not met prior  
18 to the transfer. The ratification  
19 agreement was an agreement that Great Bay  
20 and NA entered into and was approved by  
21 both boards.

22 Q. All right.

23 A. Also the reserve for  
24 refurbishment of CU-1 was never  
25 transferred. So, I looked at it, there

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1 were four obligations existing at the time  
2 of the alleged transfer.

3 Q. And -- okay. Now, the  
4 sections that are being discussed in this  
5 exhibit, Defendant's Exhibit F in  
6 paragraph five. And this is part of  
7 paragraph five that you just read. So if  
8 you flip to the prior page. All right.

9 Now, do these sections of  
10 paragraph five relate to CU-1 specifically  
11 or commercial units generally?

12 A. These all seem to relate to  
13 commercial units generally.

14 Q. And you testified that you  
15 credited the parts of the language that's  
16 specifically related to CU-1 higher than  
17 general provisions?

18 A. I did that for two reasons,  
19 one, it was specific. And the second, is  
20 the language that I quoted was documented  
21 later, so it was a subsequent document to  
22 the date of this document.

23 Q. But even this document, Mr.  
24 Doyle --

25 Could we flip back, Mr.

**Redirect - Mr. Doyle**

1 Wilczynski, to paragraph six on page four?

2 ATTORNEY WILCZYNSKI: Done.

3 THE COURT: I'm sorry?

4 ATTORNEY WILCZYNSKI: I've  
5 complied with his request.

6 THE COURT: Okay.

7 **BY ATTORNEY WENTZEL:**

8 Q. All right. Now paragraph six  
9 right after the general provisions about  
10 commercial units generally, what is the  
11 subject of paragraph six the next  
12 paragraph?

13 A. It's the Residences designated  
14 to be Two Bedroom Suites and their being  
15 mandatory members of The Neighborhood  
16 Association, and their obligations in  
17 connection with paying the expenses of the  
18 Commercial Unit.

19 Q. Which commercial unit?  
20 Commercial unit generally or specific- --

21 A. Of the commercial unit owned  
22 by it.

23 Q. Can you read the first  
24 sentence all the way down to the fourth  
25 line.

Redirect - Mr. Doyle

1           **A.** *All Owners of Residences that*  
2           *are designated as Two Bedroom Suites in*  
3           *Phase 5 or Phase 6 shall, in addition to*  
4           *being members of the Condominium*  
5           *Association, be mandatory members of the*  
6           *Neighborhood Association whose*  
7           *contemplated sole initial purpose shall be*  
8           *to own and operate Commercial Unit 1,*  
9           *anticipated to be created in Phase 6.*

10           **Q.** Just so the record, I don't  
11           want it to be unclear, you left out C-U  
12           before 1.

13           **A.** I'm sorry.

14           **Q.** Can you --

15           **A.** If you want me I'll reread it.

16           THE COURT: No, you don't  
17           have to reread it, the point there is  
18           Commercial Unit 1.

19           **BY ATTORNEY WENTZEL:**

20           **Q.** All right. And, what is this  
21           provision say about the obligation for  
22           payment of expenses of the specific  
23           commercial unit CU-1?

24           **A.** More particularly, and  
25           basically it says that -- more

Redirect - Mr. Doyle

1 particularly, and in accordance with the  
2 separate organizational governing  
3 documents of Neighborhood Association its  
4 member shall control the Neighborhood  
5 Association and be responsible for all  
6 cost and expenses related to the  
7 ownership, comma, maintenance and  
8 operation of the commercial unit owned by  
9 it including but not limited to any  
10 service that they may elect to provide.

11 Q. Okay. And again, this  
12 document the Fourth Amendment was Building  
13 H, you said. It's preparatory. And then  
14 a minute ago you said it was amended by  
15 the Fifth Amendment which is Plaintiff's  
16 Exhibit -- Plaintiff's Exhibit 3.

17 A. Uh-hum.

18 Q. All right. Now paragraph five  
19 of Plaintiff's Exhibit 3, I want you to  
20 look and see does that language, own by  
21 it, appear in the subsequent amendment.

22 **(Plaintiff's Exhibit 3 shared.)**

23 Can we go to -- there we go.  
24 It's on page 2, Mr. Wilczynski, paragraph  
25 five.

1                   ATTORNEY WILCZYNSKI: You're  
2 there.

3 **BY ATTORNEY WENTZEL:**

4                   **Q.** Okay. And the paragraph in  
5 the middle that is very similar to the one  
6 you just read on the prior Amendment --  
7 Fourth Amendment, starting, "As a member  
8 of the Neighborhood Association".

9                   **A.** Would you like me to read it?

10                  **Q.** Yes.

11                  ATTORNEY TANKENSON HODGE:  
12 I'm sorry, which paragraph are we on?

13                  ATTORNEY WENTZEL: Paragraph  
14 five, in the middle --

15                  THE COURT: Halfway down.  
16 Halfway down.

17                  ATTORNEY WENTZEL: Halfway  
18 down starting, "As a member".

19                  THE WITNESS: *As a member of*  
20 *the Neighborhood Association, Owners of*  
21 *Two Bedroom Suites are responsible for all*  
22 *costs and expenses of the ownership and*  
23 *operation of the Commercial Unit CU dash*  
24 *1, including but not limited to any*  
25 *services it may elect to provide. Period.*

**Redirect - Mr. Doyle**

1           **Q.** And this subsequent amendment  
2 that submitted CU-1 does not have the  
3 words of, the commercial unit owned by it;  
4 correct?

5           **A.** No, it doesn't. And it is why  
6 I gave it more weight when I came to my  
7 conclusion.

8           **Q.** Attorney Hodge was asking you  
9 questions about whether there was any  
10 writing reflecting the board's decision  
11 not to lock anyone out or to lien anyone,  
12 do you recall that?

13          **A.** Yes.

14          **Q.** Does the board of directors  
15 have different kinds of meetings?

16          **A.** Yes.

17          **Q.** Okay. You mention sometimes  
18 it's by telephone; right? And sometimes  
19 it's in a formal meeting?

20          **A.** Yes.

21          **Q.** All right. Does everything  
22 that happen and every decision made during  
23 every conversation by the board of  
24 directors get reflected in a writing  
25 somewhere?

Redirect - Mr. Doyle

1           **A.** No.

2           **Q.** Have you reviewed NA's meeting  
3 minutes?

4           **A.** Yes.

5           **Q.** All right. And how have you  
6 become aware of and had access to those?

7           **A.** I got access to those meeting  
8 minutes through the discovery in the other  
9 case.

10           **Q.** Okay. And you had meetings  
11 and participated in meetings of The  
12 Neighborhood Association while these  
13 negotiations were going on, and the  
14 negotiations broke down and Mr. Cutrona  
15 went ahead and sent the deed anyway? You  
16 were involved in those; right?

17           **A.** Yes. I was involved in the  
18 GPC Oversight Committee.

19           **Q.** All right. And in your review  
20 of The Neighborhood Association's minutes  
21 of their meetings, was everything that was  
22 decided in meetings you participated with  
23 them in reflected in their minutes?

24           **A.** No. The meeting -- the GPC  
25 Oversight Committee the only decision that



**Redirect - Mr. Doyle**

1 was made and taken a vote on in those  
2 meetings were approving the prior  
3 meeting's minutes. And we only met four  
4 times between December of 2016 and July  
5 20th of 2017.

6 Q. And were there other issues  
7 though that were discussed and then  
8 ultimately a decision was made not to do  
9 it?

10 THE COURT: Can we speak a  
11 little bit more towards the invoices and  
12 those decisions?

13 ATTORNEY WENTZEL: That's all  
14 right, Your Honor, I'll wait for the  
15 merits. I'll wait for the merits.

16 THE COURT: Okay. All right.

17 **BY ATTORNEY WENTZEL:**

18 Q. Looking at Defendant's Exhibit  
19 C.

20 THE COURT: You want it on  
21 the screen?

22 ATTORNEY WENTZEL: Yes,  
23 please.

24 THE COURT: Okay.

25 **(Defendant's Exhibit C shared.)**

Redirect - Mr. Doyle

1 **BY ATTORNEY WENTZEL:**

2 **Q.** All right. And Attorney Hodge  
3 was asking you about this policy that if  
4 you are late lock-out -- usage lock-out at  
5 all locations and all delinquent balances  
6 will occur ten days after the due date.  
7 That's paragraph five, do you see that?

8 **A.** Yes.

9 **Q.** And Attorney Hodge was asking  
10 you, well, shouldn't the NA members then  
11 have thought that they would be locked out  
12 if they didn't pay the CU-1 assessments,  
13 remember that?

14 **A.** Yes.

15 **Q.** All right. Who sent out the  
16 assessments and the bills that are the  
17 subject of Exhibit C?

18 **A.** These bills were sent out by  
19 the Management Company.

20 **Q.** All right. And who sent out  
21 the bills that are the subject of the CU-1  
22 assessments involved in this case?

23 **A.** The Great Bay Condominium  
24 Owners Association.

25 **Q.** And I asked you before, does

**Redirect - Mr. Doyle**

1 the Great Bay Condominium Owners  
2 Association have the ability to lock-out,  
3 do you recall that?

4 **A.** Yes.

5 **Q.** All right. And you said you  
6 didn't have any access to the --

7 **A.** We don't have access to  
8 systems, to reservations, the Cobalt  
9 Travel, to Member Services. We don't have  
10 any of that access.

11 ATTORNEY TANKENSON HODGE: So  
12 I'm going to object --

13 **BY ATTORNEY WENTZEL:**

14 **Q.** And, Mr. --

15 THE COURT: There's an  
16 objection. Hold on, Attorney Wentzel.

17 Okay, I'm sorry, Attorney Hodge.  
18 What did you say?

19 ATTORNEY TANKENSON HODGE: I  
20 said this is both leading and redundant.  
21 We do not need to have the witness repeat  
22 what he said before at six o'clock in the  
23 evening.

24 THE COURT: Yes, it is  
25 redundant. Is there a point you are

**Redirect - Mr. Doyle**

1       trying to make, Attorney Wentzel, with  
2       respect to these invoices?

3                   ATTORNEY WENTZEL: Only that  
4       the cross-examination related to different  
5       invoices than the ones that are the  
6       subject of the motion.

7                   THE COURT: What do you mean  
8       by that? She made a comparison between  
9       the letter of October 1, 2021 which was  
10      issued by the Company -- issued by the  
11      Ritz-Carlton, and the penalties there in  
12      relation to a short three weeks and one  
13      day, October 22, and -- which is the memo  
14      sent out by Great Bay sending out these  
15      invoices and giving them 20 days to pay.  
16      And she was making the comparison between  
17      the closeness in time and the penalties  
18      that are in this one, because you were  
19      saying that there were no penalties in the  
20      October 22 memo.

21                   ATTORNEY WENTZEL: I was  
22      about to get there, I just wanted to do  
23      this one first.

24                   THE COURT: Okay.

25                   ATTORNEY WENTZEL: The one

1 that went out two and a half weeks later  
2 is Plaintiff's Exhibit -- I'm sorry,  
3 Defendant's Exhibit B. And can we show  
4 that one, Your Honor?

5 THE COURT: Yes.

6 (Defendant's Exhibit B shared.)

7 BY ATTORNEY WENTZEL:

8 Q. All right. And this is the  
9 one you were asked about in regard to  
10 enforcement or penalties for these CU-1  
11 assessments, do you recall that?

12 A. Yes.

13 Q. Is there any place in  
14 Defendant's Exhibit B, anywhere, that  
15 refers to lock-out procedures or  
16 enforcement by lock-out?

17 A. No.

18 Q. Does the word lock-out even --  
19 do those words appear anywhere in this  
20 communication about the CU-1 assessments?

21 A. No.

22 Q. Does it say anything about  
23 liening, filing liens on anybody's suite  
24 interest?

25 A. No.

Redirect - Mr. Doyle

1           Q. Did -- was it your expectation  
2 that people who read this would conclude  
3 that they were gonna get locked out --

4           A. No.

5           Q. -- if they didn't pay within  
6 30 days?

7                   ATTORNEY TANKENSON HODGE:  
8 Objection, Your Honor.

9                   THE COURT: Sustained.

10          **BY ATTORNEY WENTZEL:**

11           Q. What is the only remedy for  
12 enforcement that's mentioned in this  
13 notice that went to the Suite Owners, and  
14 to orient you if you look at page four.

15                   ATTORNEY TANKENSON HODGE:  
16 So, objection, Your Honor. This is  
17 entirely redundant. We have had this  
18 examination from Attorney Wentzel about  
19 the fact that this is the only particular  
20 penalty that is mentioned in the document;  
21 it's in evidence. It speaks for itself.  
22 I don't understand why we have to be here  
23 listening to Mr. Doyle be asked the same  
24 things again.

25                   THE COURT: Sustained.

Recross - Mr. Doyle

1                   ATTORNEY WENTZEL: All right.  
2                   That's all I have, Your Honor.

3                   THE COURT: Okay. Thank you.  
4                   And is there any recross,  
5                   Attorney Hodge?

6                   ATTORNEY TANKENSON HODGE:  
7                   Just a few questions, judge.

8                   **RECROSS EXAMINATION**

9                   **BY ATTORNEY TANKENSON HODGE:**

10                  **Q.** Mr. Doyle, how many commercial  
11                  units are there at the Great Bay  
12                  Condominium Association?

13                  **A.** One.

14                  **Q.** One. So there is one and only  
15                  one commercial unit, and the references in  
16                  the documents to commercial units can only  
17                  refer to that one unit; correct?

18                  **A.** Yes. Currently, yes.

19                  **Q.** Currently. And your  
20                  condominium documents date back, like, 15  
21                  or 20 years, so one commercial unit;  
22                  right?

23                  **A.** Yes, there is only one  
24                  commercial unit.

25                  **Q.** And you were asked about

**Recross - Mr. Doyle**

1 common charges, and just want to clear  
2 this up. You are not suggesting that the  
3 assessment for what you referred to as  
4 delinquent charges in your memo to  
5 Neighborhood Association members is not  
6 common charges, are you? Isn't that the  
7 share of your common -- let me just finish  
8 my question. Isn't that the share of your  
9 total common charges for all your units,  
10 residential and commercial, that you have  
11 allocated between all those units for each  
12 of these years, isn't that the CU-1 who  
13 takes care of those charges?

14 **A.** The question it's too long.  
15 Okay.

16 THE COURT: Okay, break --  
17 okay, one second. Break up your question,  
18 Attorney Hodge, please.

19 **BY ATTORNEY TANKENSON HODGE:**

20 **Q.** Isn't it correct, Mr. Doyle,  
21 that the assessment to The Neighborhood  
22 Association owners and your memorandum,  
23 which is Exhibit B, is for the share of  
24 your common charges for the Great Bay  
25 Condominium Owners Association that you



**Recross - Mr. Doyle**

1 have calculated or that has been  
2 calculated as due from the Commercial Unit  
3 as its share of the total common charges  
4 for the Condominium?

5 **A.** Okay.

6 **Q.** Is it you don't know, you  
7 don't understand? What's the problem?

8 **A.** You went on so long. I'm just  
9 trying to get it broken up into segments.  
10 The bill we issued to suite owners for the  
11 charges that unit CU-1 owed were for  
12 common expenses that the GBCOA needed to  
13 run the entire resort.

14 **Q.** Understood. Exactly what I  
15 wanted to clarify with you. So that was  
16 what you had calculated was the share --  
17 just let me finish --

18 **A.** We don't -- the calculation --

19 **Q.** Sir.

20 THE COURT: Mr. Doyle, just  
21 wait for the question, please.

22 **BY ATTORNEY TANKENSON HODGE:**

23 **Q.** The amount that you were  
24 assessing or billing to the NA members was  
25 the amount that had been calculated as the

**Recross - Mr. Doyle**

1 correct share for the Commercial Unit of  
2 your total common charges; correct? Isn't  
3 it correct that under the Declaration CU-1  
4 has a specific percentage responsibility  
5 for your common charges?

6 **A.** Yes.

7 **Q.** Okay. And each residential  
8 unit has its own percentage share of the  
9 total common charges; correct?

10 **A.** Yes.

11 **Q.** Okay. And isn't it correct  
12 that the assessments that you sent to The  
13 Neighborhood Association members for those  
14 years 2017 to 2021 was for the CU-1 share  
15 of common charges that were calculated  
16 based on those percentages?

17 **ATTORNEY WENTZEL:** Now it's  
18 my turn to object, Your Honor. I don't  
19 know where this is going at 6:30. We've  
20 gone all over what the charges of these  
21 assessments are for. And I don't  
22 understand, and clearly the witness  
23 doesn't understand what's being asked.

24 **ATTORNEY TANKENSON HODGE:**  
25 Well, the problem is that when Mr. Doyle

Recross - Mr. Doyle

1 was being questioned by Mr. Wentzel, I  
2 thought he got him to suggest that the  
3 assessment was not for common charges, and  
4 I want to confirm that it --

5 ATTORNEY WENTZEL: No.

6 ATTORNEY TANKENSON HODGE:  
7 Sorry, counsel, just let me --

8 THE COURT: Okay, one person.  
9 One person. Go ahead, Attorney Hodge.

10 ATTORNEY TANKENSON HODGE: I  
11 wanted to ask the witness to confirm and  
12 clarify that, in fact, the assessments are  
13 for the CU-1 share of common charges?  
14 That should be a yes or no question.

15 ATTORNEY WENTZEL: My  
16 question was, is C- -- are the expenses of  
17 CU-1 common charges, not --

18 ATTORNEY TANKENSON HODGE:  
19 What do you mean by expenses? I'm talking  
20 about the assessment.

21 ATTORNEY WENTZEL: We read  
22 from the Declarations.

23 THE COURT: Yes, it was read  
24 from the -- let me see that exhibit again.  
25 That specific exhibit. I don't remember

1 the number.

2 ATTORNEY WENTZEL: It's  
3 Plaintiff's Exhibit 3.

4 THE COURT: Okay.

5 ATTORNEY TANKENSON HODGE:  
6 What is the document?

7 THE COURT: It was a short  
8 paragraph at the very top of the page.  
9 And it was in bold. Is that the -- there  
10 was a bold print in there, is that the  
11 correct one with the common expenses and  
12 the word, undivided interest? Is that the  
13 correct one?

14 ATTORNEY WENTZEL: The  
15 expenses of CU-1 that I asked him about  
16 were from the Fifth Amendment. I'm not  
17 sure where counsel -- what she's  
18 recrossing about.

19 ATTORNEY TANKENSON HODGE:  
20 Well, if I have misunderstood then  
21 cross-examination is a perfect place to  
22 clarify. So if I can be given an  
23 opportunity, it shouldn't take more than a  
24 few questions to get the witness to  
25 clarify what's important to me at this

1 point.

2 ATTORNEY WENTZEL: But  
3 customarily, Your Honor, customarily to  
4 cross you would orient to what question he  
5 testified on direct that you're crossing  
6 him about.

7 ATTORNEY TANKENSON HODGE:  
8 Well, I tried to do that.

9 ATTORNEY WENTZEL: Okay, but  
10 the document --

11 THE COURT: Okay, Attorney  
12 Wentzel, one person at a time.

13 I need to be clear as to what  
14 you're asking, Attorney Hodge.

15 ATTORNEY TANKENSON HODGE:  
16 I'm asking the witness to confirm that the  
17 assessments that they sent to NA members,  
18 and what are now marked as Exhibits A and  
19 B, B is the memo, A is the invoice. Are  
20 in fact what they -- what are calculated  
21 to be the CU-1 share of common expenses,  
22 common charges for the Association as a  
23 whole. Simple -- it's a simple question.

24 THE COURT: All right. Can  
25 you answer that question, Mr. Doyle?

**Recross - Mr. Doyle**

1 THE WITNESS: Your Honor, the  
2 charges that were included in the  
3 assessment, Attorney Hodge keeps on going  
4 back to common charges. We don't -- I  
5 haven't used the word common charge.

6 THE COURT: So what is the  
7 word that you used?

8 THE WITNESS: Basically, it's  
9 their rateable share of the expense for  
10 running the condominium unit. CU-1's  
11 rateable share of that expense. And what  
12 we billed the CU-1 unit holders was their  
13 rateable share of that rateable share.

14 **BY ATTORNEY TANKENSON HODGE:**

15 Q. But, Mr. Doyle, when we  
16 started your examination at the beginning  
17 of the testimony of your  
18 cross-examination, you confirmed to me  
19 that the term maintenance charges, annual  
20 fees, dues and common charges were all the  
21 same, and you recognized them as being  
22 interchangeable terms.

23 ATTORNEY WENTZEL: I now --

24 ATTORNEY TANKENSON HODGE:

25 Sorry, counsel, please.

**Recross - Mr. Doyle**

1 THE COURT: Okay, Attorney  
2 Wentzel, hold on. Hold on. You'll get a  
3 chance.

4 Go ahead, Attorney Hodge. And  
5 that is correct, I do recall that  
6 testimony clearly. So, go ahead.

7 **BY ATTORNEY TANKENSON HODGE:**

8 Q. I just want to make sure that  
9 nothing in the redirect has changed the  
10 fact that the charges that you assessed to  
11 the NA members for CU-1 and the exhibits  
12 before the Court, A and B, for the years  
13 2017 to 2021 are in fact what are  
14 calculated to be the CU-1 share of common  
15 charges for those years. Whether you call  
16 them common charges, annual --

17 THE COURT: Maintenance fees,  
18 annual maintenance fees or membership  
19 dues.

20 Q. It's still common charges and  
21 that's what they are; correct? Sir? Mr.  
22 Doyle?

23 A. Yes.

24 THE COURT: Mr. Doyle?

25 THE WITNESS: Yes.

1 THE COURT: All right.  
2 ATTORNEY TANKENSON HODGE:  
3 Okay. Thank you. Actually, those two  
4 were all the questions I had, judge.  
5 THE COURT: Okay. All right.  
6 Then that's it.  
7 Thank you very much, Mr. Doyle.  
8 THE WITNESS: Thank you, Your  
9 Honor.  
10 THE COURT: Okay. Thank you,  
11 Mr. Cutrona. So we will resume on  
12 December 13th at 1:00PM? Well, I guess we  
13 can resume closer to two o'clock since  
14 Miss Chung is available at two o'clock.  
15 Is that fair?  
16 ATTORNEY TANKENSON HODGE:  
17 Yes, judge.  
18 ATTORNEY WENTZEL: Yes, Your  
19 Honor.  
20 THE COURT: Okay. Can you  
21 make certain, you said between 2:00 to  
22 4:00, so make certain she is available at  
23 two o'clock, please, is that possible  
24 Attorney Wentzel and Attorney Wilczynski?  
25 ATTORNEY WENTZEL: She's very



Colloquy

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1 punctual.

2 ATTORNEY WILCZYNSKI: Yes,  
3 Your Honor.

4 THE COURT: Okay.

5 ATTORNEY WILCZYNSKI: And do  
6 I expect there to be some additional  
7 testimony from Attorney Hodge's witnesses  
8 for rebuttal? And remember we set aside  
9 time for arguments, Your Honor.

10 ATTORNEY WENTZEL: There is.

11 ATTORNEY TANKENSON HODGE: We  
12 do expect brief rebuttal testimony from  
13 Mr. Cutrona.

14 THE COURT: Okay.  
15 Understood.

16 ATTORNEY WILCZYNSKI: And  
17 time for argument, Your Honor, will that  
18 also be on the 13th?

19 THE COURT: Yes. I'm trying  
20 to wrap this up, so I presume it's just  
21 Miss Chung who is left for the plaintiffs,  
22 and then Mr. Cutrona on rebuttal, and then  
23 arguments?

24 ATTORNEY TANKENSON HODGE:  
25 That's fine. That's fine, judge.

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THE COURT: So hopefully we can wrap this up on Monday afternoon.

ATTORNEY WILCZYNSKI: That would be great.

THE COURT: Okay. Great. All right. Thank you all. Thank you, Attorney Wentzel, Attorney Hodge, Attorney Wilczynski. And good afternoon to everyone. Have a good evening. Everyone is excused.

**(Court hearing recessed.)**

**CERTIFICATE OF REPORTER**

1  
2 I, KAI M. MULLEY, RPR, an Official Court  
3 Reporter II of the Superior Court of the Virgin  
4 Islands, do hereby certify that I did report  
5 stenographically, in my professional capacity, the  
6 **PRELIMINARY INJUNCTION HEARING** held in the matter of  
7 **GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC. vs. THE**  
8 **NEIGHBORHOOD ASSOCIATION, INC., ST-20218-CV-00768**  
9 taken on **DECEMBER 9, 2021**; that I was requested to and  
10 did reduce to transcript form, the following  
11 proceedings, and that the foregoing **271** pages,  
12 inclusive, comprise a full, true and accurate  
13 transcription of the testimony given, objections of  
14 counsel, rulings of the Court, and all matters to  
15 which same relate.

16 IN WITNESS WHEREOF, I have hereunto affix my  
17 signature this 4TH day of FEBRUARY, 2022.  
18  
19  
20  
21

22 /s/KAI M. MULLEY

23 Kai M. Mulley, RPR  
24 Official Court Reporter II  
25

KAI M. MULLEY, RPR, OFFICIAL COURT REPORTER II



**CERTIFICATE OF SERVICE**

I hereby certify that on this 10th day of December, 2021, I caused a true and exact copy of the foregoing to be served via the Court's electronic filing system:

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EXHIBIT "V"

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MARK D. HODGE  
([mark@hodgelawvi.com](mailto:mark@hodgelawvi.com))

March 23, 2018

Mark Wilczynski, Esq.  
Law Offices of Mark Wilczynski  
Palm Passage, St. 20-22  
St. Thomas, VI 00802  
By Hand Delivery with a copy sent Via Email to [mwilczynski@usvilaw.com](mailto:mwilczynski@usvilaw.com)

Re: Neighborhood Association, Inc. and Great Bay

Dear Mark:

I hope you are well and recovering from the hurricanes. I have not had any reply from you to my letter of November 21, 2017, and I assume you and your client understand my position.

For the sake of good order, I write now to advise that the deed from NA to GBCOA, which was delivered previously, has been recorded. A copy of the date-stamped deed is enclosed for your records

If you or your client have any questions about this, let me know.

Sincerely,



Maria Tankenson Hodge

Encl.

Cc: Neighborhood Association

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A.001271

Doc # 2018001505  
# Pages 7  
03/06/2018 02:05 PM  
Official Records of  
ST THOMAS / ST JOHN  
ERICA DOVER H.P.A.  
RECORDER OF DEEDS  
Fees \$119.00

**CONDOMINIUM DEED**

THIS INDENTURE is made the 20 day of September, 2017 by and between The Neighborhood Association, Inc., a not for profit corporation organized and existing under the laws of the Virgin Islands of the United States, whose address is 6910 Great Bay, Gardenia Building, 5<sup>th</sup> Floor, St. Thomas, Virgin Islands 00802-2552 (hereinafter "Grantor") and Great Bay Condominium Owners Association, Inc., a not for profit Virgin Islands corporation whose address is 6910 Great Bay, St. Thomas, Virgin Islands 00802 ("Grantee").

WHEREAS, pursuant to the provisions of the Declaration of Condominium of Great Bay Condominiums, recorded on May 31, 2002, in the Office of the Recorder of Deeds in St Thomas, Virgin Islands, as amended by various amendments thereafter, including the Fourth Amendment thereto, dated June 6, 2006, (hereinafter " the Declaration") the Grantor is authorized to convey to Grantee a commercial unit, including the Unit hereinafter described and conveyed, and

WHEREAS, under the provisions of the Declaration the Grantee is obligated to accept such conveyance, and

WHEREAS, the instant conveyance is made free of any service contracts or other obligations except as provided in the Declaration, By Laws and Rules and Regulations of the Grantee,

NOW, THEREFORE, this agreement,

WITNESSETH: That the Grantor does hereby grant to Grantee and Grantee's successors and assigns, the real property described as follows:

The Unit known as CU-1 (hereinafter the "Unit") in the Great Bay Condominium, at the property known as Parcel Nos. 4-2, 4-3, 4-4, 4-5, 4-6, 4-7, 4-8, 5-33A, 4-10, Remainder Parcel No. 4 (Southeastern Portion) Estate Nazareth, No. 1 Red Hook Quarter, St. Thomas, U.S. Virgin Islands and Remainder Parcel No. 4 (Southwestern Portion) Estate Nazareth, No. 2 Red Hook Quarter, St. Thomas, U.S. Virgin Islands, designated and described as such in the Declaration of Condominium for Great Bay Condominium Declaration and the Supplementary Declaration of Condominium for the Club at Great Bay Condominium (collectively, the "Declaration") respectively establishing plans for condominium ownership and interval ownership of said buildings and said property, made by RC Hotels (Virgin Islands), Inc. under the Condominium Act of the Virgin Islands of the United States (Chapter 33, Title 28, Virgin Islands Code), dated May 10, 2002 and recorded in the Office of the Recorder of Deeds for St. Thomas and St. John, U.S. Virgin Islands on May 31, 2002, as Document Nos. 2002002741 and 2002002742, respectively, as subsequently expanded and amended,

Doc # 2018001505



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Being the same interest conveyed to Grantor by RC Hotels (Virgin Islands), Inc., a corporation organized and existing under the laws of the United States Virgin Islands by Condominium Deed dated December 20, 2008 and recorded in the Recorder of Deeds Office for the District of St. Thomas and St. John on December 30, 2008 as Document No. 2008012283.

TOGETHER WITH the undivided percentage interest in the common areas and facilities of the Great Bay Condominium (hereinafter the "Common Elements"), as the same may be subsequently amended from time to time, including all easements appurtenant thereto;

TOGETHER ALSO WITH the appurtenances and all the estate of the Grantor in and to the Unit;

TOGETHER ALSO WITH all fixtures and permanent equipment used or useful in connection with the above-described Unit of which the Unit is appurtenant and now or hereafter attached to or installed therein.

The above-described Unit, together with the appurtenances and other interests hereinabove described in connection with the Unit now or hereafter vested or attached to or installed in the Unit to which the Unit is appurtenant, are hereinafter collectively referred to as the "Property".

SUBJECT TO AND WITH THE BENEFIT OF U.S. Virgin Islands zoning laws and regulations, real property taxes for year 2017 and for subsequent years thereafter, covenants, restrictions and easements of record, the provisions of the Declaration and of the Bylaws of Great Bay Condominium Owners Association, Inc., and The Neighborhood Association, Inc., as amended from time to time by instruments recorded in the Office of the Recorder of Deeds for St. Thomas and St. John, U.S. Virgin Islands, which provisions, together with any amendments thereto, shall constitute covenants running with the land and shall bind any person having at any time any interest or estate in the Property, as though such provisions were recited and stipulated at length herein.

TO HAVE AND TO HOLD the Property conveyed hereby unto Grantee, Grantee's successors and assigns, in fee simple absolute forever.

AND THE GRANTOR WARRANTS that the Property is free from encumbrances suffered or created by acts of Grantor, will forever warrant and defend the title to the Property against all persons lawful claiming the same from, through or under Grantor.



**AGREEMENT AND TERMINATION OF RESTAURANT LEASE  
BETWEEN  
THE NEIGHBORHOOD ASSOCIATION, INC. as Landlord  
And  
RESTAURANT GROUP 101, L.L.C., as Tenant**

THIS AGREEMENT is made effective as of the 31st day of August, 2017 (the "Effective Date"), by and between THE NEIGHBORHOOD ASSOCIATION, INC., a Virgin Islands not-for-profit corporation ("Landlord" or "NA") and RESTAURANT GROUP 101, LLC, a U.S. Virgin Islands Limited Liability Company ("Tenant").

**WITNESSETH:**

WHEREAS, Landlord and Tenant entered into that certain Restaurant Lease dated September 6, 2013 (the "Original Lease"), whereby Landlord leased to Tenant and Tenant leased from Landlord certain premises containing approximately 3700 square feet interior space and 850 square feet patio balcony located at The Ritz-Carlton Club, St. Thomas, in St. Thomas, U.S. Virgin Islands, which is scheduled to expire on October 31, 2017; and

WHEREAS, Landlord and Tenant now desire to provide for the early termination of the Lease.

NOW, THEREFORE, in and for consideration of the mutual covenants hereinafter contained, and other valuable consideration exchanged between the parties, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Notwithstanding any provisions of the Lease to the contrary, the term of the Lease shall be deemed expired as of August 31, 2017 ("Termination Date"). Said termination shall be with the same force and effect as if the term of the Lease was, by the terms thereof, fixed to expire on the Termination Date.

Tenant shall remain liable for the full and faithful performance of its obligations and for payment of all amounts which may be due and payable under the Lease through the Termination Date.

Notwithstanding the foregoing, Tenant shall remain obligated to perform the terms of the indemnity undertaking in article 21 of the Original Lease, for a period of two years following termination, as to any claim that may arise for any act or event occurring prior to the date of termination.

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

**LANDLORD**

**TENANT**

**THE NEIGHBORHOOD ASSOCIATION,  
INC.**

**RESTAURANT**

*Sm Cutrona*  
Name: Salvatore M. Cutrona, Sr  
Title: President

*T. Hebl*  
Name: Todd Hebl  
Title: President

**WITNESS:**

**WITNESS:**

Name: *Deputy Cutrona*  
Date: *9/17/17*

Name: *pl*  
Date: *9/22/17*



THE UNITED STATES VIRGIN ISLANDS  
OFFICE OF THE LIEUTENANT GOVERNOR  
DIVISION OF CORPORATIONS AND TRADEMARKS

5049 Kongens Gade  
Charlotte Amalie, Virgin Islands 00802  
Phone - 340.776.8515  
Fax - 340.776.4612


1105 King Street  
Christiansted, Virgin Islands 00820  
Phone - 340.773.6449  
Fax - 340.773.0330

November 16, 2017

CERTIFICATION OF GOOD STANDING

This is to certify that the nonprofit corporation known as **GREAT BAY CONDOMINIUM OWNER'S ASSOCIATION, INC.** filed Articles of Incorporation in the Office of the Lieutenant Governor on **MAY 16, 2000** and a Certificate of Incorporation was issued by the Lieutenant Governor on **OCTOBER 22, 2002** authorizing the said corporation to conduct business in the Virgin Islands and the corporation is considered to be in good standing.



  
Denise Johannes  
Director, Division of Corporation  
and Trademarks

DJ/gg

A.001276

**AFFIDAVIT**

MARIA TANKENSON HODGE, after being duly sworn, deposes and says:

1. That she is an adult resident of St Thomas, Virgin Islands, and is the attorney for the grantor under the attached deed, The Neighborhood Association, Inc. ("NA") a Virgin Islands not-for-profit corporation, with a mailing address of 6910 Great Bay, Gardenia Building, 5<sup>th</sup> Floor, St. Thomas, Virgin Islands 00802-2552, and she has knowledge of the matters set forth herein.

2. That the Grantee in the deed, Great Bay Condominium Owners Association, Inc., is a not-for-profit Virgin Islands corporation whose address is 6910 Great Bay, St. Thomas, Virgin Islands 00802 ("Grantee"), which holds a certificate of good standing from the Office of the Lieutenant Governor.

3. That for recording purposes, the value of the property being conveyed herein is \$100,000 based upon the Tax Assessor's 2017 tax records.

4. That because the conveyance made by the deed submitted herewith is made to a not for profit corporation, which holds a certificate of good standing from the Office of the Lieutenant Governor (copy attached), the conveyance is exempt from stamp tax under the provisions of Title 33 VIC §128(a)(7).

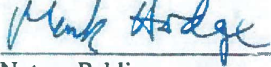
FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
Maria Tankenson Hodge

TERRITORY OF THE VIRGIN ISLANDS )

The foregoing affidavit was acknowledge before me this 5<sup>th</sup> day of March , 2018 by Maria Tankenson Hodge, Esq., being duly sworn upon her oath, as the attorney representing the Grantor in the transaction.

IN WITNESS WHEREOF, I have set my hand and seal.

  
\_\_\_\_\_  
Notary Public  
My Commission Expires:

**NOTARY PUBLIC**  
Name: *Mark Daniel Hodge*  
My Commission Exp: May 19, 2020  
NP Commission #: LNP-03-16  
St. Thomas/St. John, USVI District



**OFFICE OF THE LIEUTENANT GOVERNOR  
OFFICE OF THE TAX COLLECTOR**

5049 Kongens Gade • Charlotte Amalie, Virgin Islands 00802 • 340.776-8505 • Fax 340.779.7825  
1105 King Street • Christiansted, Virgin Islands 00820 • 340.773.6449 • Fax 340.719.2355

**REAL PROPERTY TAX CLEARANCE LETTER**

**TO:** Office of the Recorder of Deeds

**FROM:** Office of the Tax Collector

In accordance with Title 28, Section 121, as amended, this shall certify that there are no outstanding Real Property Tax obligations for the following:

PARCEL NUMBER	1-07803-0437-C1
LEGAL DESCRIPTION	UNIT CU-1 GREAT BAY CONDOS
OWNER'S NAME	THE NEIGHBORHOOD ASSOCIATION INC.

Taxes have been researched up to and including 2017.

CERTIFIED TRUE AND CORRECT BY

Ludence Romney  
Tax Collector

  
SIGNATURE

March 5, 2018

DATE

Doc # 2018001505

Transaction #: 789129

Erica Dover M.P.A.  
Recorder of Deeds  
St. Thomas / St. John  
Office of the Recorder of Deeds  
Kongens Gade #18  
St. Thomas, VI 00802  
(340) 774-9906

Doc#: 2018001505 Pages: 8  
Recorded: 03/06/2018 02:05:49 PM  
Type: DEED

RECORDING FEE:	\$112.00
PER PAGE FEE:	\$7.00

Total Fees: \$119.00

Check - 21933	\$119.00
Change:	\$0.00

Filed By: HODGE AND HODGE  
03/06/2018 02:05:49 PM  
Total Documents: 1  
Cashier: ERMA

A.001279

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.	)	CIVIL NO. ST-18-CV-768
	)	
PLAINTIFF,	)	ACTION FOR DECLARATORY
v.	)	JUDGMENT, TO CANCEL DEED
	)	AND TO QUIET TITLE
THE NEIGHBORHOOD ASSOCIATION, INC.	)	
	)	
DEFENDANT.	)	

**NOTICE OF FILING CORRECTED EXHIBIT 23 FOR  
HEARING ON PRELIMINARY INJUNCTION**

Plaintiff, Great Bay Condominium Association, Inc., by and through its undersigned counsel, hereby gives notice of the filing of **PLAINTIFF'S CORRECTED EXHIBIT 23** for consideration at the December 13, 2021 hearing on Defendant's Motion for Temporary Restraining Order and Preliminary Injunction, a copy of which is attached.

The original submission marked as Exhibit 23 was inadvertently provided to the Court. The original Exhibit 23 contained copies of both deeds at issue. It included both the two-page deed that was originally delivered to Abbey Chung in September of 2017 and the three-page deed that was recorded in March of 2018. This corrected exhibit substitutes the original Exhibit 23 with a copy of only the two-page deed that was delivered in September 2017 to Abigail Chung.

Respectfully Submitted,

**LAW OFFICE OF W. MARK WILCZYNSKI, P.C.**

DATED: December 10, 2021

\_\_\_\_\_/s/ W. Mark Wilczynski  
**W. MARK WILCZYNSKI, ESQ.**  
P.O. Box 1150  
St. Thomas, VI 00804-1150  
Tel: (340) 774-4547  
Email: [Mark@usvilaw.com](mailto:Mark@usvilaw.com)  
V. I. Bar No.: 515  
**Attorney for Great Bay Condominium  
Owners Association, Inc.**



*Great Bay Condominium Association, Inc. v. The Neighborhood Association, Inc.*  
Case No. ST-2018-CV-768  
Notice of Filing of Corrected Exhibit 23 for Hearing on Preliminary Injunction

- AND -

**DAVID F. WENTZEL, ESQ.**  
Wentzel Law Offices  
77 W. Washington St., Suite 2100  
Chicago, IL 60602  
Tel: (312) 697-0500  
Fax: (312) 697-0505  
Email: [dwentzel@wentzellaw.com](mailto:dwentzel@wentzellaw.com)  
**Attorney for Great Bay Condominium  
Owners Association, Inc.**

**CERTIFICATE OF SERVICE**

I CERTIFY that on this the 10th day of December, 2021, I caused a true and exact copy of the foregoing **NOTICE OF FILING CORRECTED EXHIBIT 23 FOR HEARING ON PRELIMINARY INJUNCTION** to be filed using the Court's C-Track E-Filing system which will send notice, unless otherwise indicated below, of same:

**MARIA T. HODGE, ESQ.**  
Hodge & Hodge  
1340 Taarneberg  
St. Thomas VI 00802  
Tel: (340) 774-6845  
Fax: (340) 714-1848  
[maria@hodgelawvi.com](mailto:maria@hodgelawvi.com)  
**Counsel for Defendant**

By:       /s/ Carolyn C. Duncan

**CORRECTED**  
**EXHIBIT 23**

**CONDOMINIUM DEED**

---

THIS INDENTURE is made the 20 day of September, 2017 by and between The Neighborhood Association, Inc., a not for profit corporation organized and existing under the laws of the Virgin Islands of the United States, whose address is 6910 Great Bay, Gardenia Building, 5<sup>th</sup> Floor, St. Thomas, Virgin Islands 00802-2552 (hereinafter "Grantor") and Great Bay Condominium Owners Association, Inc., a not for profit Virgin Islands corporation whose address is 6910 Great Bay, St. Thomas, Virgin Islands 00802 ("Grantee").

WHEREAS, pursuant to the provisions of the Declaration of Condominium of Great Bay Condominiums, recorded on May 31, 2002, in the Office of the Recorder of Deeds in St Thomas, Virgin Islands, as amended by various amendments thereafter, including the Fourth Amendment thereto, dated June 6, 2006, (hereinafter " the Declaration") the Grantor is authorized to convey to Grantee a commercial unit, including the Unit hereinafter described and conveyed, and

WHEREAS, under the provisions of the Declaration the Grantee is obligated to accept such conveyance, and

WHEREAS, the instant conveyance is made free of any service contracts or other obligations except as provided in the Declaration, By Laws and Rules and Regulations of the Grantee,

NOW, THEREFORE, this agreement,

WITNESSETH: That the Grantor does hereby grant to Grantee and Grantee's successors and assigns, the real property described as follows:

The Unit known as CU-1 (hereinafter the "Unit") in the Great Bay Condominium, at the property known as Parcel Nos. 4-2, 4-3, 4-4, 4-5, 4-6, 4-7, 4-8, 5-33A, 4-10, Remainder Parcel No. 4 (Southeastern Portion) Estate Nazareth, No. 1 Red Hook Quarter, St. Thomas, U.S. Virgin Islands and Remainder Parcel No. 4 (Southwestern Portion) Estate Nazareth, No. 2 Red Hook Quarter, St. Thomas, U.S. Virgin Islands, designated and described as such in the Declaration of Condominium for Great Bay Condominium Declaration and the Supplementary Declaration of Condominium for the Club at Great Bay Condominium (collectively, the "Declaration") respectively establishing plans for condominium ownership and interval ownership of said buildings and said property, made by RC Hotels (Virgin Islands), Inc. under the Condominium Act of the Virgin Islands of the United States (Chapter 33, Title 28, Virgin Islands Code), dated May 10, 2002 and recorded in the Office of the Recorder of Deeds for St. Thomas and St. John, U.S. Virgin Islands on May 31, 2002, as Document Nos. 2002002741 and 2002002742, respectively, as subsequently expanded and amended,



# E-Filing Submission Confirmation

The following electronic filing(s) were successfully submitted. Please keep a copy of this confirmation for your records.

**Submitted Date** 12-10-2021 03:30 PM  
**E-File Confirmation #** 15441639164616892

**Filings Submitted:**

<b>Court</b>	<b>Case Number</b>	<b>Filing Type(s)</b>	<b>Documents</b>	<b>Fees</b>
Superior Court of the Virgin Islands	ST-2018-CV-00768	Notice - Notice of Filing	2	\$ 0.00
<u>Total</u>				<u>\$ 0.00</u>

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

\*\*\*\*\*

GREAT BAY CONDOMINIUM OWNERS  
ASSOCIATION, INC.

PLAINTIFF,

vs.

THE NEIGHBORHOOD ASSOCIATION, INC.  
DEFENDANT.

---

)  
)  
)  
) DECLARATORY  
) JUDGEMENT  
) CASE NO.  
) ST-2018-CV-00768  
)  
)  
)  
)

Preliminary Injunction  
Hearing  
T R A N S C R I P T

DECEMBER 13, 2021

BEFORE: HONORABLE JUDGE RENEE GUMBS CARTY  
PRESIDING JUDGE

COURT REPORTER: MYKA V. CALLENDER-SMITH, CSR.  
Official Court Reporter I

A.001286

//

APPEARANCES:

Law Offices of Mark Wilczynski  
Mark W. Wilczynski, Esq.  
Palm Passe Ste. C20-22  
P.O. Box 1150  
St. Thomas, V.I. 00804  
Mwilczynski@usvilaw.com

AND

David Wentzel Office  
David Wentzel, Esq.  
77 W. Washington, St. Suite 2100  
Chicago, IL 60602

(For GBCOA, INC.)

\*\*\*\*\*

Law Office of Hodge & Hodge  
Maria Hodge, Esq.  
1340 Taarneberg  
St. Thomas, V.I. 00802  
Maria@hodgelawvi.com

(For THE NEIGHBORHOOD ASSOCIATION,  
INC.)

I N D E X

PLAINTIFF WITNESSES

D    X

Abby Chung

19    31

DEFENSE WITNESSES

D    X

Salvatore Cutrona

78    87

REPORTER'S CERTIFICATE.....183





1 Ms. Chung, good afternoon.

2 MS. CHUNG: Good afternoon, Your  
3 Honor.

4 THE COURT: Okay. I'm going to  
5 put you in the waiting room just for one minute and  
6 then I'm going to bring you back in, all right.  
7 Thank you.

8 **(JUDGE CARTY PUTS MS. CHUNG INTO THE WAITING**  
9 **ROOM.)**

10 THE COURT: All right. So, I've  
11 received the Defense Exhibit V and Plaintiff's --  
12 the corrected copy of Exhibit 23, but I'm still  
13 confused because I looked carefully at both  
14 exhibits and this was the same issue that I raised  
15 at the last hearing, last week. They seem to be  
16 identical except today, page 2 is missing from the  
17 Plaintiff's copy of this deed.

18 So what is -- what exactly is the issue  
19 here? It just seems to me that the Plaintiff's  
20 exhibit is incomplete. So, correct me if I'm  
21 wrong.

22 ATTORNEY WILCZYNSKI: Yes, Your  
23 Honor. I'll be happy to since it was my office  
24 that made the inadvertent error.

25 The original Exhibit 23 contained a

1 copy of both deeds, not only the deed that was  
2 purportedly delivered to my client in September of  
3 2017, but also a copy of the deed that was recorded  
4 in March of 2018.

5 If the Court were to look at my  
6 corrected Exhibit 23 and defendant's Exhibit, I  
7 think it's U. I believe that it was --

8 THE COURT: "U" was the one from  
9 last week. The one from today is Defense Exhibit  
10 "V", as in Veronica.

11 ATTORNEY WILCZYNSKI: Okay. If  
12 the Court were to look at the documents, the first  
13 thing that comes to mind would be that two-page  
14 document that we filed as our corrected Exhibit 23  
15 is only two pages. And the exhibit that defense  
16 has introduced is a three-page document.

17 The document that we have is a document  
18 we received and that's why we put it into evidence.  
19 The other differences are that the Court will note  
20 on corrected Exhibit 23, the date of the  
21 attestation by the, by the notary is  
22 September 30th, 2017, whereas the date of  
23 attestation on the deed filed -- the deed that was  
24 recorded is September 20th.

25 There are a number of other small

1 differences between the documents which indicate  
2 quite clearly that the two documents are not copies  
3 of the same documents or not the same document.  
4 This is obvious because as my client will testify  
5 -- well the document that --

6 THE COURT: Now, attorney --

7 ATTORNEY WILCZYNSKI: --  
8 Wilczynski, Your Honor.

9 THE COURT: Okay, I'll let you  
10 finish, Attorney Wilczynski.

11 ATTORNEY WILCZYNSKI: All right.  
12 Your Honor, the only other thing I will say is  
13 that, Ms. Chung will testify today that the deed  
14 that she received was put in her safe and has  
15 never, has never left the safe since that original  
16 time it was given to her on September 30th and  
17 could not therefore have been the document that was  
18 recorded by the defendants. And this of course, is  
19 a matter that relates to the primary case and it's  
20 certainly necessary to have significant evidence  
21 especially from Mr. Cutrona on the purported signer  
22 of the deed, to find out when it was signed, where  
23 it was signed, why there were two, if they are two,  
24 if he has an explanation for the two, maybe three  
25 deeds that were prepared on some day in September

1 or perhaps as late as March 4th, 2018.

2 We simply don't know, and we haven't  
3 been able to do discovery on that issue, Your  
4 Honor.

5 THE COURT: Okay, I'll allow  
6 Attorney Hodge to respond and then we'll begin.

7 ATTORNEY HODGE: Thank you, Your  
8 Honor.

9 So, this is from our point of view much  
10 to do about nothing. It is clear from the  
11 testimony and to the extend, if needed Mr. Cutrona  
12 is here to clarify that the condominium deed from  
13 Neighborhood Association to Great Bay was executed  
14 on September 20th, 2017.

15 THE COURT: September two, zero,  
16 2017?

17 ATTORNEY HODGE: Two, zero, 2017.  
18 That's the date on the document. That's the date  
19 that Mr. Cutrona signed it. That's the date he had  
20 it witnessed. That's the date he had it notarized.  
21 It is also clear that he sent to Ms. Chung an  
22 original of that deed at that time and that she, in  
23 fact, received it because she wrote back and  
24 complained about it. She said she don't accept  
25 this. I don't like this deed and so on.

1 THE COURT: And this deed,  
2 Attorney Hodge, is three pages?

3 ATTORNEY HODGE: The deed itself,  
4 Judge is three pages. The recorded document which  
5 has been marked as Exhibit "V" has some attachments  
6 because when one records the deed, they have to  
7 attach, for example, the Tax Clearance Letter and  
8 so on. So the attachments for the deed that was  
9 recorded was Exhibit V.

10 Mr. Cutrona will testify and he's here  
11 today to do so, that he executed several duplicate  
12 originals, recognizing that there was a possibility  
13 that Great Bay would not cooperate in this  
14 transaction.

15 That he delivered one of those  
16 originals to Ms. Chung by I think Federal Express.

17 That he delivered another original to  
18 John Doyle, the president of Great Bay. So they  
19 got two originals.

20 That he kept an original and that he --  
21 Sorry, there was some strange cling there.

22 Are you still hearing me, Judge?

23 THE COURT: Yes, I can hear you  
24 well.

25 ATTORNEY HODGE: Then, he sent an

1 original to his attorney in the Virgin Islands to  
2 have available to record.

3           So the document when it was recorded on  
4 March 6th, 2018, as it shows on its face was the  
5 same deed that was sent to Ms. Chung and it had  
6 attachments that were required in order to make it  
7 recordable, for example, the affidavit of counsel  
8 about the grantor and grantee both being  
9 non-profits that are in good standing, the Tax  
10 Clearance Letter, the Agreement for Termination,  
11 the restaurant lease.

12           This is essentially a non-issue, Your  
13 Honor. There's essentially no good faith dispute  
14 that the Neighborhood Association delivered the  
15 original of this deed to Ms. Chung and to  
16 Mr. Doyle, not Tom Doyle who testified, Judge, but  
17 another Mr. Doyle who was then the president of  
18 Great Bay and a lawyer, also got an original of  
19 this deed when it was executed in September 2017.  
20 And then a duplicate original was recorded in March  
21 and that the duplicate original was sent to  
22 Attorney Wilczynski.

23           Exhibit V which I wouldn't have thought  
24 we would have to produce, but Mr. Cutrona will be  
25 here to testify was the correspondence that

1 transmitted the recorded deed to Attorney  
2 Wilczynski with the attachments with regard for it  
3 to be record.

4           And Your Honor, you will see in Exhibit  
5 V, I mean it's proffered now, Your Honor, but when  
6 Mr. Cutrona testifies that I sent this recorded  
7 copy of the deed to Mr. Wilczynski on March 23rd,  
8 2018, both by e-mail and by hand-delivery and that  
9 they had both the unrecorded deed, the original  
10 deed that was delivered in September and later the  
11 recorded deed in their hands since at least March  
12 of 2018.

13           It is the idea that there is, you know,  
14 some discrepancy, you know, constitutes any kind of  
15 misbehavior is not factual.

16           And by the way, Judge, the notary on  
17 this recorded deed doesn't say the 30th. It's just  
18 the 20th with a line going down a little further  
19 than um -- then it might have. But they're all  
20 executed on the same day. They're all notarized  
21 the same day, and they are all duplicate originals.

22           So the Rules of Evidence recognizes the  
23 possibility of duplicate originals. So it's just  
24 -- there is no issue here, Judge. And we have the  
25 testimony to the extent if you need it with



1 Mr. Cutrona.

2 THE COURT: So on page 3 of  
3 Exhibit V, you're saying that what appears or what  
4 may look like the 30th is really the 20th; it's  
5 just two originals?

6 ATTORNEY HODGE: Exactly, Judge.

7 ATTORNEY WILCZYNSKI: Your Honor,  
8 for the first time today, I've heard duplicate  
9 originals mentioned in relation to this subject.  
10 There is nothing in the deed itself that allows for  
11 duplicate originals. There is nothing in the  
12 circumstances of the preparation and transmittal of  
13 the documents to my office to indicate that these  
14 were duplicate originals.

15 In fact, the document that was sent to  
16 my office to make it 100 percent clear was not an  
17 original document.

18 ATTORNEY HODGE: Really? It was  
19 a copy?

20 ATTORNEY WILCZYNSKI: I  
21 understand. As of March 5th or whatever date it  
22 was that it was transmitted, we have not received a  
23 copy of the deed that was recorded.

24 And once again, regardless of whether  
25 Attorney Hodge believes it or not, my client

1 received a two-page document, not a three-page  
2 document. And that is the basis for the  
3 significant difference.

4           Your Honor, it's not that there is a  
5 little bit of difference or a lot of difference.  
6 It's the fact that there is a difference. And up  
7 until the last half-hour, we had no idea there were  
8 any duplicate originals. It seemed like there  
9 probably was, but there were not. And there is no  
10 -- there is no indication from counsel that that is  
11 appropriate other than her legal arguments.

12           If it relates to this hearing, Your  
13 Honor, and we believe frankly, this relates to the  
14 merits. And unfortunately, we've been forced to  
15 deal with some merits issues here rather than  
16 issues related to this specific TRO, but there  
17 certainly needs to be some discovery on it. And I  
18 should be allowed to examine Mr. Cutrona, not  
19 today, not in the course of a hearing that doesn't  
20 have anything to do with this, but in the discovery  
21 that we've been requesting all along, Your Honor.

22           THE COURT: Okay.

23           ATTORNEY HODGE: Your Honor, if I  
24 may just briefly respond?

25           Attorney Wilczynski suggests that

1 somehow I have to establish that the deed says  
2 there has been duplicate originals, but he is the  
3 one who is suggesting there is something improper  
4 about a party executing duplicate originals, and  
5 there is no such authority.

6           So the letter that I am representing to  
7 the Court as an officer of the Court, that has been  
8 marked as Exhibit V says and I quote a copy of the  
9 date-stamp deed is enclosed for your records, close  
10 quote. That's the last line of the second  
11 paragraph, Judge.

12                   THE COURT: Yes.

13                   ATTORNEY HODGE: I sent this as  
14 you see it to Attorney Wilczynski. If he claims  
15 that that is somehow a misleading statement to  
16 suggest that what I sent him was supposed to be a  
17 duplicate original and not exactly what I said, a  
18 copy of the date-stamp deed, I don't know where  
19 that comes from. But if there is such an argument,  
20 I would submit that the Court should invite the  
21 parties to brief it, and not allow it to be used as  
22 if it were some sort of impropriety.

23                   This is the third time in this case,  
24 Judge. I'm so disturbed about this. This is the  
25 third time in this case that Attorney Wilczynski

1 has said or implied that I have done something  
2 unethical and I can hardly believe it.

3 ATTORNEY WILCZYNSKI: And I can  
4 hardly believe that you said that because frankly,  
5 I did not. And I am not now saying that there is  
6 anything unethical. All I'm suggesting to you is  
7 the legal requirements.

8 And Your Honor, we contacted this  
9 Recorder's Office to confirm from them that an  
10 original deed has to be the one that is recorded.  
11 Without a doubt, the original deed has to be  
12 recorded.

13 Our position has been all along that  
14 that's not the original deed. If they sent us the  
15 original deed, we didn't record it. And now we  
16 hear for the first time today -- and I understand  
17 that that might be certainly a good explanation,  
18 but for the first time today, we're hearing there  
19 is some other deed that was recorded, that we don't  
20 have a copy of.

21 I'm sorry, we don't have the original,  
22 Maria. So it's understood --

23 ATTORNEY HODGE: You don't have  
24 the original; that's true.

25 ATTORNEY WILCZYNSKI: That's

1 right.

2 THE COURT: Okay.

3 ATTORNEY WILCZYNSKI: And  
4 delivery is required.

5 ATTORNEY HODGE: But Your Honor,  
6 delivery of the original was made long before this  
7 because Ms. Chung and John Doyle, both were sent  
8 originals of this deed.

9 This duplicate original that was  
10 recorded is an additional original and counsel has  
11 not provided any legal authority that that recorded  
12 version had to somehow also be delivered to them.

13 In response to this letter, Judge, my  
14 letter to Attorney Wilczynski of March 23rd, 2018,  
15 that told him the deed has been recorded, enclosed  
16 a copy, said this was a copy of the date-stamped  
17 deed to and including today, I've not received a  
18 communication from him that says, I demand you give  
19 me the original that you recorded. Never have  
20 gotten such a request.

21 ATTORNEY WILCZYNSKI: Nor do I  
22 need to provide such request, Your Honor. It is  
23 delivery of the deed, is the delivery of the  
24 original. That is our position.

25 THE COURT: Okay. I'm sorry.

1 Finish your statement, please.

2 ATTORNEY WILCZYNSKI: Your Honor,  
3 that was my statement. Delivery of the deed  
4 requires delivery of the original. Whatever was  
5 said to Ms. Chung being a two-page document, being  
6 a non-identical copy of something that was  
7 recorded, is not sufficient delivery.

8 THE COURT: Okay.

9 ATTORNEY HODGE: Can I just  
10 clarify?

11 Is Attorney Wilczynski if he's saying  
12 it was a two-page document, saying that it didn't  
13 have a signature page?

14 THE COURT: No, he's saying that  
15 it didn't have the second page, the second page  
16 with the writing.

17 ATTORNEY WILCZYNSKI: That's  
18 correct, Your Honor.

19 ATTORNEY HODGE: I know nothing  
20 about that, Your Honor, nor has it ever been  
21 communicated to us.

22 ATTORNEY WILCZYNSKI: Of course  
23 it was communicated, Attorney Hodge. It's an  
24 exhibit to our complaint. If you look at our  
25 complaint, you would see that the two-page deed is

1 the exhibit.

2           If you looked at the motion for summary  
3 judgement, you will see that the two-page deed is  
4 an exhibit. We've never hid it. We've never done  
5 anything other than to indicate that this document  
6 is the document that we received. I didn't hide  
7 anything.

8           THE COURT: Attorney Wilczynski,  
9 wouldn't you say that the -- what you received or  
10 what you're saying Ms. Chung received however was  
11 or appeared to be incomplete, in that the first  
12 page of the deed ends with a comma in the middle of  
13 a sentence, and obviously it appeared in and of  
14 itself that it was an incomplete or it's just that  
15 the page was missing.

16           ATTORNEY WILCZYNSKI: That's  
17 true, Your Honor. It looks that way. There's a  
18 page missing, Your Honor.

19           ATTORNEY HODGE: So again, Your  
20 Honor, the complaint doesn't say we were given an  
21 incomplete deed. Nowhere in the complaint does it  
22 say that.

23           ATTORNEY WILCZYNSKI: It does --

24           ATTORNEY HODGE: I'm just saying,  
25 the complaint doesn't say that. The motion for

1 summary judgement doesn't say that. Today is the  
2 first time I have ever heard that.

3 THE COURT: Okay. All right.  
4 Let us -- okay. Let us proceed.

5 We'll take the testimony from  
6 Ms. Chung.

7 All right. This issue with the deed  
8 somehow has to be resolved, but I will take the  
9 complete testimony at this time.

10 (JUDGE RETURNS MS. CHUNG INTO THE  
11 HEARING.)

12 THE COURT: Okay. Good  
13 afternoon, Ms. Chung once again, raise your right  
14 hand to be sworn please.

15 ABBY CHUNG, having been first  
16 duly sworn as a witness, testified as follows:

17 MS. CHUNG: Yes, I do.

18 THE CLERK: Thank you.

19 DIRECT EXAMINATION

20 BY ATTORNEY WENTZEL:

21 Q. Good afternoon, Abby.

22 A. Good afternoon.

23 Q. Can you tell the Court where you live please?

24 A. I live in South Lake, Texas?

25 Q. And are you married?



1           A. I'm married to my husband Jim, yes, for about  
2 40 years.

3           Q. All right. And can you describe for the Court  
4 your educational background?

5           A. Yeah, I have a Bachelor's Degree in Management  
6 from the University of Buffalo, in New York.

7           Q. All right. And can you describe for the Court  
8 your professional background?

9           A. Yes. I worked for about 30 years for Johnson  
10 & Johnson in various management roles. I worked in  
11 finance. I worked as a comptroller, vice president in  
12 J&J Medical Korea. I've had jobs that took me around  
13 the world a couple of times. I was very fortunate.  
14 I've had roles in management accounting and M&A in world  
15 wide operations and most recently in contract strategy  
16 and Management where my group was responsible for  
17 contracting with large hospital groups in the United  
18 States for medical devices and pharmaceuticals.

19           Q. Thank you. And you're currently the president  
20 of the Great Bay Condominium Owners Association; is that  
21 right?

22           A. Yes, I am.

23           Q. Could you describe for the Court your history  
24 and involvement with the GBCOA board of directors?

25           A. Yes. I started over 10 years ago now as a

1 volunteer to the board. I was interested in getting  
2 involved, and I actually called Mr. Cutrona when one of  
3 the calls for board members went out. It like looked a  
4 lot like the kind of experience I had that they were  
5 searching for. And so we talked briefly about it.

6 I met him once and then I started attending  
7 board meetings for a short period of time as a  
8 volunteer. And then when one board member was going to  
9 resigned ahead of her time, I was appointed to fill her  
10 position until that position was over and then at that  
11 time, I ran for the board and was elected. And that was  
12 about 10 years ago. And I've served on the board as the  
13 treasurer, as the vice-president and more recently as  
14 the president of the association.

15 I've had a long history with the club, a very  
16 positive one. And my family and I really enjoy being  
17 here even when we're in a court hearing on a day at the  
18 beach. So we really enjoy the club.

19 Q. All right, thank you. And what year did you  
20 become president?

21 A. Oh, my goodness, probably about 2017, 2016. I  
22 don't have the exact date in front of me.

23 Q. That's fine.

24 THE COURT: Is it before the  
25 hurricanes, Maria and Irma?

1 THE WITNESS: Yes. It was just a  
2 little bit before the hurricanes, Your Honor.

3 THE COURT: Okay, very well.

4 Q. All right. Ms. Chung, are you personally  
5 knowledgeable about the CU-1 assessments that are the  
6 subjects of NA's motion for temporary restraining order  
7 and preliminary injunction?

8 A. Yes.

9 Q. Just describe what involvement did you have  
10 with the assessments in terms of figuring out the  
11 amounts and what was due?

12 A. Okay. Well, it was unusual because we're not  
13 normally as a board involved in doing the assessments.  
14 We oversee the association. We're responsible for the  
15 budgets, and we work with the management company to  
16 review and prepare those budgets every year. But once  
17 the budget are prepared, the assessments and the  
18 maintenance fee, invoices, go out from our management  
19 company, the Ritz Carlton.

20 In this particular case, they refused to do  
21 that and so the board was left with the job of figuring  
22 out how to do it and what we did is we asked the  
23 management company for the amount that was in arrears  
24 which included the maintenance fees, interest and  
25 penalties.

1           And then we worked with the company, Concord,  
2 that does the billing for our regular maintenance fees  
3 and we talked to them about doing the special billing  
4 for us. And we were forced to do that, and then I  
5 really acted as, I would say a financial clerk, if you  
6 will to put -- to work with Concord to get the bills put  
7 together to make sure that it was the right amount and  
8 that they were sent out according to the plan that we  
9 had which was to get the bills out in the month of  
10 October.

11           Q. All right. And you said that the terms of the  
12 amount that was owed, that was past due, where did you  
13 get that information?

14           A. I got that information from Marsha Latent  
15 Herman who is our finance director.

16           Q. All right. And can you just tell the Court,  
17 it may be of record, but I don't have a note that it was  
18 specifically testified to yet.

19                   Can you tell the Court what the total amount  
20 is, the collective amount of all the individual invoices  
21 that went to the suite owners?

22           A. Yes. The total bill was about \$1 million and  
23 that was made of about 760,000 of the maintenance fees,  
24 116 of late fees and 142,000 of interest and again that  
25 was for a five-year period. So about a million dollars

1 for the five years. And that was divided up by 288  
2 which are the number of interest that the suite owners  
3 have and that turned out to be about \$3500 per interest.

4 THE COURT: I'm sorry. Quote the  
5 price, the cost again with respect to the interest,  
6 please.

7 THE WITNESS: The cost per  
8 interest for the total of five years, Judge, was  
9 2,636 for maintenance fees, 402 for late fees and  
10 493 for interest. So the total bill for one  
11 interest for a suite owner received was \$3,532.  
12 Now that was for five years. So for a single year,  
13 it was about \$700, only. Five hundred and  
14 twenty-seven for the maintenance fee.

15 If the maintenance fees had been paid  
16 on time, they would only amounted to about \$527 a  
17 year which is -- which is a small amount compared  
18 to their maintenance fees for their condo unit.

19 THE COURT: Okay.

20 THE WITNESS: The condo unit  
21 runs, just to give you some context, it runs about  
22 \$13,000 a year which they pay every year. And of  
23 that, in the past, when they were paying this fee,  
24 they were paying their maintenance fees on time  
25 about \$525 of that was for the CU-1.

1 THE COURT: Okay. All right,  
2 thank you.

3 THE WITNESS: But less than about  
4 -- less than 5 percent.

5 ATTORNEY WENTZEL: If Your Honor  
6 has any questions about the amounts or how it  
7 breaks down, I'll be happy to ask the witness so  
8 she can explain that.

9 I just wanted the Court to have the  
10 benefit of understanding how much per year, and how  
11 much for the whole five years.

12 THE COURT: Okay. Very well,  
13 thank you.

14 BY ATTORNEY WENTZEL:

15 Q. Ms. Chung, you submitted an affidavit in  
16 connection with the pending motion before the Court,  
17 correct?

18 A. Um-hum, that's correct.

19 Q. All right. That's Plaintiff's Exhibit 2.  
20 Much of what's in it has already been subject of  
21 extensive testimony. So, I'm just going to go over a  
22 couple of things.

23 A. Yes.

24 Q. But first, can you verify -- do you verify  
25 that all of the statements in your affidavit are true

1 and correct?

2 A. Yes, I do.

3 ATTORNEY HODGE: Your Honor, I  
4 just want to make sure we note that we do object to  
5 some of the contents of Ms. Chung's affidavit.

6 She has materials attached that are  
7 hearsay and so I'm not wanting to waive those  
8 objections simply by virtue of her authenticating  
9 the affidavit.

10 THE COURT: Okay, understood.

11 Thank you.

12 BY ATTORNEY WENTZEL:

13 Q. Ms. Chung, paragraphs 10 through 12 of your  
14 affidavit, discuss the payment of these assessments by  
15 the developer, the Ritz Carlton; is that correct?

16 A. Yes.

17 Q. All right. And I'm now actually going to ask  
18 you about the attachments, but let me ask you this.

19 Do you know who from -- on behalf of the  
20 developer, remitted the payment for GBCOA for  
21 assessments?

22 A. My understanding is that it was someone in  
23 Rich Heyward's organizations, Richard Heyward's  
24 organization.

25 Q. Well, who is Richard Heyward?

1           A.    Richard Heyward is one of the vice-presidents  
2 of Marriott Vacation Trust -- No, the Marriott Vacation  
3 Club -- I am sorry, Marriott Vacation Club.

4           Q.    All right.

5           A.    And he's the VP --

6           Q.    Okay.

7           A.    -- of the vacation club. They have a couple  
8 different titles they use, but generally speaking my  
9 understanding is that he's the vice-president of the  
10 Marriott Vacation Club.

11          Q.    All right. And is Exhibit B to your affidavit  
12 the cover letter Mr. Heyward sent with the payment?

13                   ATTORNEY HODGE: So, we do object  
14 to that, Your Honor. That is one of the items  
15 that's hearsay attachments to Ms. Chung's  
16 deposition -- I mean, to Ms. Chung's affidavit.

17                   ATTORNEY WENTZEL: I think --

18                   ATTORNEY HODGE: I think we  
19 actually went through it with Mr. Doyle yesterday  
20 and raised --I mean, Friday, and raised the same  
21 objection and it's hearsay.

22                   THE COURT: Yes, you did.

23                   THE WITNESS: Mr. Wentzel, could  
24 you tell me --

25                   THE COURT: So, the question is



1 just for her to basically authenticate or admit  
2 that this was attached to her affidavit?

3 BY ATTORNEY WENTZEL:

4 Q. And is it an authentic copy of the letter?

5 A. Would you show me a copy of that, Mr. Wentzel?

6 Q. Sure. Attorney Wilczynski is our tech  
7 specialist.

8 A. Okay.

9 ATTORNEY WILCZYNSKI: Your Honor,  
10 Your Honor, could you please enable screen sharing  
11 please?

12 THE COURT: Yes, yes, I will.

13 ATTORNEY WENTZEL: I apologize,  
14 Ms. Chung. I forgot that you're actually on  
15 vacation right now.

16 THE WITNESS: Sorry -- yeah,  
17 sorry about that.

18 ATTORNEY WILCZYNSKI: What  
19 exhibit is that?

20 ATTORNEY WENTZEL: It's Exhibit B  
21 to Plaintiff's Exhibit 2; so it's Exhibit 2-B, two  
22 dash B.

23 ATTORNEY WILCZYNSKI: There is  
24 it.

25 THE WITNESS: All I see is

1 Exhibit 2-B.

2 ATTORNEY WENTZEL: It's a --  
3 there is little lag.

4 THE WITNESS: Okay. Can you  
5 scroll down a little bit? Keep scrolling. Okay,  
6 stop please. Okay.

7 This letter came to me --

8 ATTORNEY HODGE: Your Honor, I'm  
9 going to object to the witness. It's going into a  
10 narrative. The question for her is, was this a  
11 true copy of what was attached to her affidavit?  
12 If that's the --

13 ATTORNEY WENTZEL: No.

14 Q. The question is, is it true copy of the letter  
15 you received from Mr. Heyward?

16 A. Yes, it is.

17 Q. All right. Since you received this letter  
18 from Mr. Heyward and since the developer paid the  
19 CU-1 assessments, have you had any contacts or  
20 discussions with Mr. Heyward?

21 A. Not since this -- not since I received this  
22 letter, no.

23 Q. Okay. So he hasn't asked you for any refund  
24 of what they paid?

25 A. He has not.

1           Q. Has anyone else on behalf of the developer  
2 requested any refund of the portion of the assessments  
3 that the developer paid?

4           A. No.

5           Q. And you heard there was some discussion about  
6 the issue of the deed, but the only thing I want to ask  
7 about it right now is this.

8                     Did you receive the deed from Mr. Cutrona  
9 relating to the CU-1?

10          A. Yes, I did.

11          Q. Can you tell approximately when you received  
12 it?

13                     THE COURT: You can remove  
14 Exhibit 2-B.

15                     ATTORNEY WENTZEL: Yes, Your  
16 Honor.

17                     THE COURT: All right, thank you.

18          A. I received that deed in a Fed Ex envelope in  
19 September of 2017, I believe, September 2017.

20          Q. What did you do with the deed?

21          A. The deed is in a safe in my home.

22          Q. Has it been in the safe since you received it?

23          A. It's been in the safe for the last like three  
24 and a half years since we bought the safe. Before that,  
25 it was in my office.

1           Q. All right. Can you say as you sit here today  
2 whether you got is two or three pages?

3           A. No, I cannot; I haven't looked at it in some  
4 time.

5           Q. All right.

6                         ATTORNEY WENTZEL: I pass the  
7 witness, Your Honor.

8                         THE COURT: Very well.

9                         Attorney Hodge.

10                        ATTORNEY HODGE: Yes. Yes, Your  
11 Honor, thank you.

12                                 **CROSS EXAMINATION**

13           **BY ATTORNEY HODGE:**

14           Q. Good afternoon, Ms. Chung. My name is a Maria  
15 Hodge. I'm the attorney for Neighborhood Association.  
16 Can you hear me, okay?

17           A. Yep, good afternoon.

18           Q. So Ms. Chung, in connection with your  
19 testimony today and your affidavit, you do not claim  
20 that the members of the Neighborhood Association are  
21 owners of CU-1, correct?

22           A. I don't know that I understand that question.

23           Q. Do you know what it means to be the owner of a  
24 condominium?

25           A. I know what it means for me, yes.

1           Q. It is not kind of a personal opinion. Do you  
2 contend as you sit here today, that the members of the  
3 Neighborhood Association are the legal owners of CU-1?

4           ATTORNEY WENTZEL: Objection.  
5 Calls for a legal conclusion.

6           THE COURT: Overruled.  
7 You need to answer, Ms. Chung.

8           THE WITNESS: Would you repeat  
9 that question, Ms. Hodge?

10 BY ATTORNEY HODGE:

11           Q. I'll ask you it another way.

12                     You do not claim that the 218 members of  
13 Neighborhood Association individually own CU-1, do you?

14           A. Individually own CU-1. I don't know that I --  
15 I think that's a technical question kind of beyond what  
16 I know. CU-1 is no part --

17           Q. You don't have an answer on that. You don't  
18 know whether they are the owners or not?

19           A. They are responsible for the maintenance --

20           Q. Now that's a different question. That's also  
21 a legal conclusion.

22                     There is -- You've testified in response to  
23 questions from Mr. Wentzel today that you remember  
24 getting a deed for CU-1 from the Neighborhood  
25 Association, correct?

1 A. Yes.

2 Q. And you remember getting that deed?

3 A. Yes, yes, yes.

4 Q. And you remember getting that deed and having  
5 it in your office until you put it in a safe, correct?

6 A. That's right.

7 Q. And you remember that deed being a deed from  
8 the Neighborhood Association, Inc., to the Great Bay  
9 Condominium Owners Association, correct?

10 A. I would have to look at it exactly at this  
11 point. My understanding is that they tried to convey  
12 the deed to our association, that I'm quite sure of.

13 Q. So you understood even though you disputed the  
14 validity of it, that the Neighborhood Association had  
15 delivered to you a deed for CU-1 that named the Great  
16 Bay Condominium Owners Association Inc., as the grantee  
17 on the deed, right?

18 A. Is the grant -- I'm not sure I know what that  
19 term means exactly, but they put the -- Sal put the --  
20 someone put the deed to CU-1 in an envelope, mailed it  
21 to us. We did not want to accept it as the Great Bay  
22 Condominium --

23 Q. That is not my question. My question is --

24 ATTORNEY WENTZEL: Your Honor,  
25 can she --

1                                   **(ALL SPEAKING AT ONE TIME.)**

2                                   THE COURT: Okay. One question  
3 at a time.

4                                   Ms. Chung, answer the question  
5 specifically as asked by counsel, please.

6 BY ATTORNEY HODGE:

7                                   Q. Ms. Chung, are you saying that you do not have  
8 a sufficient knowledge or understanding to know what it  
9 means to be the grantee of a deed to real estate; you  
10 don't know about that?

11                                   A. They attempted to convey --

12                                   THE COURT: Ms. Chung, answer the  
13 question.

14                                   THE WITNESS: Okay.

15                                   A. Would you say it again?

16                                   Q. Are you telling the Court that you do not know  
17 or understand enough to understand the concept of what a  
18 grantee is under a deed? Is that a term you are  
19 familiar with or not?

20                                   A. I'm familiar with it, but not in a true legal  
21 sense.

22                                   Q. And so as you sit here today, is it your  
23 testimony that you don't know whether Neighborhood  
24 Association Inc., sent a deed to you that named the  
25 Great Bay Condominium Owners Association Inc., as the

1 grantee of unit CU-1 or do you know?

2 A. I remember that it was to the Great Bay  
3 Condominium Owners Association. The word grantee --  
4 don't -- I can't tell you sitting here that I saw -- I  
5 mean, that I remember reading that word exactly. There  
6 are probably other words that can be used in these  
7 terms.

8 Q. So do you know what it means to be the grantor  
9 of real property in your deed? Is that a term that is  
10 familiar to you?

11 A. It's familiar to me, Ms. Hodge, but I would  
12 say in a small "g" kind of sense, not in a capital "G"  
13 kind of sense which I think you're asking me for.

14 So I don't -- like, someone that gives  
15 something to someone, could be a grantor small "g". I  
16 don't know if it's a capital "G" in this sense.

17 Q. So let me take the capital out of this  
18 question and see if we can get anywhere.

19 Do you say as you sit here before the court  
20 today that you know who is named in the deed that  
21 Neighborhood Association sent you in 2017 regarding the  
22 title to CU-1; do you know that?

23 A. I don't. I say I don't because this term  
24 could have been in there, it could have not been in  
25 there; I just don't recall.



1           Q.    And I understood from your testimony that  
2 Mr. Wentzel listed that you don't remember how many  
3 pages the deed contained that you received from  
4 Mr. Cutrona, for CU-1; correct?

5           A.    That's correct.

6           Q.    So you're not going to be in a position today  
7 to authenticate or to dispute a copy of a document as  
8 the deed that was sent to you because you don't remember  
9 even how many pages that document had; is that right?

10          A.    Well, the deed is in my safe -- Your --  
11 Ms. Hodge.

12          Q.    As you sit here in court, sort of in court  
13 under oath, you can't tell us whether a particular  
14 document is or is not a true copy of the deed you  
15 received because you don't remember?

16          A.    I cannot authenticate one, right.

17          Q.    Am I correctly understanding that your  
18 testimony to be that you that you do claim that the  
19 members of the Neighborhood Association -- the members  
20 Neighborhood Association have ever been the owners of  
21 title to CU-1; do you make that claim?

22          A.    The Neighborhood Association is responsible  
23 for the counsel.

24          Q.    No, no it is not responsible for anyone. I'm  
25 just trying to find out who you say has or in the past

1 had ownership of the unit?

2 A. The unit -- I don't -- Great Bay Association  
3 -- Great Bay Condo Association has -- I don't know.

4 Ask that question again, please.

5 Q. Do you claim, that you -- well, I'll try a new  
6 question.

7 Do you claim today, that you have any  
8 knowledge of who owns CU-1?

9 A. No.

10 **(ALL SPEAKING AT ONCE.)**

11 THE COURT: One person at the  
12 time.

13 Ms. Chung, I will hear your testimony.

14 THE WITNESS: My speculation is  
15 that NA owns it. Small zero. They own it. They  
16 have been paying the maintenance fees on it for  
17 years up until 2017. They had responsibility for  
18 it. They covered the costs associated with it  
19 until 2017.

20 They put a deed in the mail and they  
21 sent it to us and they wanted us to pay it from  
22 that point. They wanted GBCOA to pay it.

23 Before they --

24 THE COURT: Wait for the next  
25 question. Thank you.

1 BY ATTORNEY HODGE:

2 Q. Before they sent you the deed in 2017; am I  
3 correct, that it was your understanding that the  
4 Neighborhood Association Inc., was the owner of CU-1?

5 A. I'd have to speculate; I don't know the answer  
6 to that.

7 Q. Okay.

8 A. My speculation is that --

9 ATTORNEY HODGE: Don't tell me.

10 THE COURT: Hold on, Ms. Chung.

11 Attorney Hodge.

12 ATTORNEY HODGE: Yes.

13 BY ATTORNEY HODGE:

14 Q. Don't tell me your speculation, Ms. Chung  
15 because the Court only wants people with personal  
16 knowledge; we don't want speculation.

17 So, in your affidavit that you submitted  
18 with this opposition to this retraining order, you take  
19 issue with the Court's entry of the temporary retraining  
20 order and you specifically complained about part of the  
21 TRO that says the actions of Great Bay in issuing these  
22 assessments to the Neighborhood Association Members was  
23 unlawfully and that it was based on a dubious  
24 interpretation of underlying documents.

25 Do you remember saying that in your

1 affidavit?

2 A. Yes. It is paragraph 14 you are referring to,  
3 Ms. Hodge?

4 Q. Yes.

5 THE COURT: Please refer to her  
6 as Attorney Hodge.

7 ATTORNEY HODGE: Pardon me?

8 THE COURT: No.

9 Ms. Chung, please refer to counsel as  
10 Attorney Hodge.

11 THE WITNESS: Okay. Thank you.

12 THE COURT: Thank you.

13 BY ATTORNEY HODGE:

14 Q. Yes, paragraph 14.

15 A. Okay. Would you ask the question again? I'm  
16 there now.

17 Q. I said, you took issue with the temporary  
18 retraining order and in particular, you complained about  
19 the court's findings that your assessments on the  
20 Neighborhood Association members was quote *unlawful* and  
21 that it was based on a quote *dubious interpretation*  
22 close quote of the governing condominium documents; do  
23 you remember saying that?

24 A. Yes.

25 Q. Okay. So on the question on whether the

1 assessments were unlawfully, are you familiar with the  
2 provisions of the Virgin Islands Code that specify who  
3 is responsible for the common charges on a condominium  
4 of the Virgin Islands?

5 A. I am not.

6 Q. So you did not know that the Virgin Islands  
7 Code stated that common charges are the obligation of  
8 apartment owners?

9 A. No, I did not.

10 Q. Okay. And if the Virgin Islands Code said  
11 that, and if the Neighborhood Association members are  
12 not now and never have been the owners of CU-1, you  
13 would admit wouldn't you that it was correct to say that  
14 your assessment was unlawful?

15 ATTORNEY WENTZEL: Objection.  
16 Calls for legal conclusion. Speculation.

17 ATTORNEY HODGE: Your Honor, if  
18 the witness has filed an affidavit in which he  
19 objected to the Court's TRO including a finding  
20 that this was unlawful, she ought to be able to  
21 answer questions about the basis for claiming that  
22 it was unlawful.

23 THE COURT: Overrule.

24 You have to answer, Ms. Chung.

25 A. Would you state the question again, Attorney

1 Hodge?

2 Q. If the Virgin Islands Code specifies that the  
3 owners of condominiums are responsible for the  
4 assessments and common charges, and if the Neighborhood  
5 Association members are not now and never have been the  
6 owners of CU-1, you would have to admit would you not  
7 that the assessment on the members was unlawful because  
8 it was contrary to the Virgin Islands Code?

9 A. No, I wouldn't.

10 Q. You wouldn't admit that?

11 A. No, I wouldn't. Because I don't know anything  
12 about the Virgin Islands Code. These are -- This  
13 information -- No, I wouldn't.

14 Q. You don't know anything about the Virgin  
15 Islands Code then, I'm not quite sure how you put  
16 yourself in a position of saying that it was incorrect  
17 for the Court to say that the assessments were unlawful.

18 A. It was from advice of counsel.

19 Q. Okay. And insofar as you said that the TRO  
20 was incorrect in saying it was based on dubious  
21 interpretation documents, are you familiar with the  
22 Articles of Incorporation of your own corporation, Great  
23 Bay?

24 A. I'm familiar with them, in a general sense,  
25 yes.

1           Q. Did you know that --

2                   ATTORNEY HODGE: Can you show the  
3 witness what's been marked as Plaintiff's  
4 Exhibit 5, Your Honor?

5                   THE COURT: Yes.

6                   ATTORNEY WILCZYNSKI: Who is  
7 going to do that?

8                   ATTORNEY HODGE: I'm not sure who  
9 has control of the screen. I see Exhibit 5 up  
10 though. Is that good enough?

11           Q. Can you see Exhibit 5, Ms. Chung?

12           A. I can.

13           Q. Okay. Do you recognize this? Do you need me  
14 to scroll down?

15           A. It looks like a document that is part of our  
16 Articles of Incorporation.

17           Q. It looks like a document that is part of your  
18 Articles of --

19           A. A page -- a page from.

20           Q. Okay. Here's the whole thing. Let us go all  
21 the way down and let you see the whole thing.

22                   Okay, now do you recognize this as the  
23 Articles of Incorporation of the Great Bay Condominium  
24 Owners Association?

25           A. I see what's in front of me. So, it says

1 Articles of Incorporation. I guess I have to trust that  
2 it is what you say it is. I don't have another copy  
3 next to me to be able to prove that.

4 Q. So, it says on the top right here from the  
5 Office of the Lieutenant Governor Division of  
6 Corporations and Trademarks.

7 Do you actually have any reasons to doubt  
8 that these are the Articles of Incorporation of the  
9 Corporation since they've been marked as a Plaintiff's  
10 Exhibit by your own lawyers?

11 A. No.

12 Q. Okay. So looking at this document then and  
13 taking it as correct that these are the Articles of  
14 Incorporation of the corporation that you're here  
15 testifying for, I'm just going to direct your attention  
16 down here to Article IV where it says *Powers*; do you see  
17 that?

18 A. I do.

19 Q. Do you understand that a corporation's powers  
20 are in part specified and controlled by its Articles of  
21 in Corporation?

22 A. Yes.

23 ATTORNEY WENTZEL: Objection.  
24 Calls for legal conclusion.

25 A. Generally.



1 THE COURT: Overruled.

2 Q. Did you ever look at your Articles of  
3 Corporation to determine whether your powers to take the  
4 actions you were taking against the Neighborhood  
5 Association members or limit it or controlled by any  
6 requirements?

7 A. When I have questions about *powers*, I consult  
8 our attorneys.

9 Q. So this particular provision, *Article IV*,  
10 could you just read that, please?

11 A. Out loud or to myself?

12 Q. Yes, out loud.

13 A. Okay. *The association shall have all powers*  
14 *which an association of condominium owners is entitled*  
15 *under the laws of the Virgin Islands of the United*  
16 *States including specifically, Title 28, Virgin Islands*  
17 *Code Chapter 33 and shall specifically have the power to*  
18 *acquire own and convey real and personal property to*  
19 *make and collect assessments against members, to defray*  
20 *the expenses of the corporation in administering the*  
21 *affairs of the condominium, enforcing the declaration*  
22 *and to use the proceeds of the assessments in carrying*  
23 *out the objects and purposes for which the association*  
24 *is formed.*

25 Q. So that provision of your powers specifically

1 says that Title 28 Virgin Islands Code Chapter 33 is a  
2 governing legal provision on your power to make  
3 assessments against members; isn't it?

4 A. Well, I can read it to you. I'm not -- I  
5 can't really say what it is means. I can read it back  
6 to you, and I can tell you what it says, but I can't  
7 tell you what it means because --

8 Q. You can't tell me what it means, okay.

9 So when you said in your affidavit that it  
10 was improper for the Court to say that your actions had  
11 been unlawful, you weren't suggesting that you actually  
12 had any knowledge of what the controlling law was; is  
13 that right?

14 ATTORNEY WENTZEL: Object to the  
15 form.

16 THE COURT: Overruled.

17 Q. This that right, Ms. Chung?

18 A. We -- when I have questions like that, I get  
19 information from our attorneys.

20 Q. But you gave the affidavit in which you  
21 criticized the Court's TRO and I'm asking you whether  
22 you now can see that you didn't have any personal  
23 knowledge to base your affidavit on to criticize the  
24 Court's conclusion about whether your actions were  
25 lawful?

1                   ATTORNEY WENTZEL: Object to the  
2 form.

3                   THE COURT: Overruled.

4           A. Can you ask the question again, Attorney  
5 Hodge?

6           Q. You gave an affidavit under oath in this case  
7 in which you criticized the Court's TRO in part for  
8 saying that your actions were unlawful.

9           A. Um-hum.

10          Q. I'm asking you whether you now concede that  
11 you did not have basis to make that statement because  
12 you now concede you had no personal familiarity with  
13 Title 28 or how it affected your powers?

14                   ATTORNEY WENTZEL: Objection.

15                   THE COURT: Overruled.

16                   You need to answer, Ms. Chung.

17          A. I have not read the Virgin Islands chapter --  
18 code chapter 33. I relied on advice of counsel and the  
19 background that he gave me to make the statement.

20          Q. So do you now adhere to or withdraw your  
21 statement under oath in your affidavit that it was  
22 improper for the Court to make that ruling?

23          A. I don't withdraw it, no. My understanding  
24 based on what I knew at the time, it was unlawful and  
25 improper. We did not initiate an improper campaign,

1 goodness.

2 Q. You said now that you don't know what Title 28  
3 Virgin Islands Code 33 says about who you can assess,  
4 correct?

5 A. (Non-responsive.)

6 Q. You don't know what it says?

7 A. We are allowed to assess our -- the members of  
8 our association. I know that it is says --

9 Q. Excuse me. The question before you is. Do  
10 you now say under oath, you do not know what Title 28  
11 Virgin Islands Code, Chapter 33 says about the  
12 limitation of the powers of assessments of the  
13 condominium associations.

14 Do you know that or do you not know that?

15 ATTORNEY WILCZYNSKI: Your Honor,  
16 I object. If in fact the Title 28, Chapter 33 does  
17 do that, she should be given an opportunity to  
18 review it now because Attorney Hodge is asking her  
19 questions about limitations that may or may not  
20 exists, Your Honor.

21 THE COURT: Overruled.

22 BY ATTORNEY HODGE:

23 Q. Do you have an answer, Ms. Chung, for that?

24 A. I've lost track of the question, Attorney  
25 Hodge.

1           Q. I've actually lost track of the question too  
2 since I can't get you to answer it.

3                     Do you now say under oath that you do or do  
4 not know what limitations Title 28 Virgin Islands Code,  
5 Chapter 33 puts on the power of your association to  
6 assess members with common charges? Do you know what is  
7 in there or not?

8           A. I have not read Title 28. I relied on the  
9 advice of our counsel.

10           Q. And in this same set of articles; do you see  
11 Article VII, *Membership*?

12           A. Yes.

13           Q. Can you read the first sentence of that  
14 provision?

15           A. *Membership in the association --*

16           Q. No, no, no, no. The first sentence of B; I'm  
17 sorry.

18           A. The first sentence of B?

19           Q. Yes.

20           A. *Annual common charges shall be assessed on*  
21 *each residence in accordance with its percentage*  
22 *interests in the common areas and facilities of Great*  
23 *Bay Condominium as described in the declaration as*  
24 *amended from time to time, and shall be timely paid by*  
25 *the owner thereof of the association in an amount to be*

1     *set by the board of directors.*

2             Q.     So in this case, the assessments that you  
3     issued were not issued to the owner.  Whether you were  
4     the owner according to the deed or whether Neighborhood  
5     Association was ever found to be the owners?

6                     ATTORNEY WENTZEL:  Objection.  
7     Calls for argument and calls for legal conclusions.

8                     THE COURT:  Sustained.

9     BY ATTORNEY HODGE:

10            Q.     Your assessments in the case to the  
11     Neighborhood Association members were not issued to the  
12     owner of the condominium, correct?

13            A.     I thought we went over that a minute ago.

14            Q.     Well, I'm talking about it right now.

15            A.     I issued it -- we issued the invoices to the  
16     suite owners who in many documents that I've read and we  
17     attached to the billing that we sent referenced that the  
18     suite owners are responsible for those charge -- for the  
19     maintenance fees that we sent them.

20            Q.     Just to be clear, you're not talking about the  
21     common charges for their residences.  You're talking  
22     about the common charges for CU-1, correct?

23            A.     I'm talking about the maintenance fees for  
24     CU-1.  I'm not an expert on the term of *common charges*.

25            Q.     Well, I'm not asking you to be an expert.

1 We've already established to the testimony on Friday  
2 that common charges and the maintenance fees are the  
3 same.

4 My question is, you're not referring to  
5 assessments on the NA members for their individual  
6 residence maintenance fees. You're talking about the  
7 maintenance fees for CU-1 that you were billing to them,  
8 correct?

9 ATTORNEY WILCZYNSKI: Objection.  
10 That mis-states her testimony, Your Honor.

11 THE COURT: No, that's the  
12 testimony -- she's speaking about the testimony  
13 from Mr. Doyle. There were three separate  
14 categories that all amount to the same thing in  
15 terms of the assessment.

16 ATTORNEY WILCZYNSKI: Your Honor,  
17 may I speak to that? Because Mr. Doyle answered  
18 the question that it was the pro rata portion of  
19 the pro rata portion that related to CU-1. That is  
20 what he answered directly to Attorney Hodge's  
21 question about what was the assessment, and he told  
22 the Court and he told Attorney Hodge that he --  
23 that the assessment was for the pro rata portion of  
24 the individual members of the pro rata portion of  
25 CU-1's in the maintenance fees. That's what he

1 said, Your Honor.

2 THE COURT: He also said that --  
3 unless, I'm misunderstanding the question.

4 Ms. Chung just stated she's not an  
5 expert on the phrase *common charges*, but the  
6 maintenance fees is what she was referring to. And  
7 Attorney Hodge as far as I understand is basically  
8 saying it's the same thing. But it's a different  
9 terminology that was used throughout the document  
10 and Mr. Doyle did state that they all basically  
11 mean the same thing, but she's also asking whether  
12 this is for the commercial unit one, rather than  
13 the personal -- or the individual fees for each  
14 owner.

15 ATTORNEY WILCZYNSKI: While I  
16 understand that, Your Honor, the assessment in this  
17 case that Mr. Doyle said was for the .085 portion  
18 of the fees associated with their assessment.  
19 That's what those people -- that's what the  
20 individual owners of the unit was assessed.  
21 Whether there's a contractual obligation for those  
22 owners to pay portions of the maintenance fees or  
23 the business fees associated with CU-1, that's an  
24 entirely different issue.

25 The assessment was for their percentage



1 interest which is why Mr. Doyle specifically  
2 stated, it was for the pro rata portion -- of the  
3 pro rata portion. That was very clear, Your Honor.

4 ATTORNEY HODGE: That is the most  
5 ridiculous thing that I have ever heard. And if I  
6 might say so Your Honor, it is quite inappropriate  
7 to have such lengthy arguments about what Mr. Doyle  
8 said or meant in the midst of this testimony from  
9 Ms. Chung.

10 ATTORNEY WILCZYNSKI: Ms. Chung  
11 wasn't there --

12 ATTORNEY HODGE: Excuse me.

13 THE COURT: Okay, okay, Attorney  
14 Wilczynski.

15 Attorney Hodge, go ahead.

16 ATTORNEY HODGE: Ms. Chung wasn't  
17 allowed to be present during that testimony. The  
18 whole idea of sequestering witnesses is that  
19 they're not influencing each other's testimony.

20 I think the Court will recall and if we  
21 need to, I guess the transcript will verify what  
22 Mr. Doyle said about the terms maintenance fee,  
23 annual maintenance fee and so on being synonymous  
24 with common charges.

25 My question to the witness right now

1 Your Honor, has to do with this particular  
2 provision in her articles that talks about how  
3 annual common charges are to be assessed upon the  
4 owner. It's a simple question, and if the witness  
5 is going to avoid the question by saying I don't  
6 know what a common charge is then, I guess we  
7 should have that on the record.

8 I shall read it --

9 ATTORNEY WENTZEL: It is on the  
10 record.

11 ATTORNEY HODGE: Shall I rephrase  
12 the question, Your Honor?

13 THE COURT: Yes, please.

14 BY ATTORNEY HODGE:

15 Q. So Ms. Chung, please correct me if I'm wrong.  
16 What is your position with the Great Bay Owners  
17 Association?

18 A. I'm the president.

19 Q. You're the president. And are you testifying  
20 to the Court that you don't know what common charges  
21 are?

22 A. I know what common charges are.

23 Q. Okay. So the question is with regard to this  
24 provision in Article VII of your Articles of  
25 Corporation, do you see the provision that says, *Common*

1 *charges shall be assessed on each resident and should be*  
2 *paid by the owner thereof. Do you see that?*

3 A. I do.

4 Q. Okay. And with regard to the assessments that  
5 are the subject of this case, the assessments to the  
6 Neighborhood Association members, I want a clear  
7 understanding that those assessments are not for the  
8 common charges for their own individual residences.  
9 Therefore, their pro rated share of what you have  
10 calculated to be a contribution to the common charges  
11 for CU-1, right?

12 A. The way that I would -- My husband, would you  
13 close the door please?

14 I was disturbed for a minute. I'm sorry. He  
15 disturbed me. Would you say that again?

16 Q. The invoices that you sent the 288 members of  
17 the Neighborhood Association, over \$3,000 a piece were  
18 not for the common charges for their own residences.  
19 They were for a pro rated share of the common charges  
20 you calculated were due for CU-1, correct?

21 A. They were their prorated charges in my words  
22 of their maintenance fees.

23 Q. For CU-1, is that correct?

24 A. For CU-1. We have a maintenance fee bill and  
25 we divide it up between CU-1, two bedroom residences,

1 two bedroom suites and three bedroom residences. And  
2 the amount that we have in the bill was their prorated  
3 portion of the maintenance fees for Great Bay  
4 Condominium Owners Association.

5 Q. For CU-1?

6 A. For CU-1.

7 Q. Because they all got separate additional bills  
8 for common charges for their own residences, right?

9 A. If you're using a term, I'm going to use the  
10 term maintenance fees.

11 Q. Please don't decide what terms to use.

12 A. Okay.

13 Q. I'm asking you about this provision in your  
14 Articles of Incorporation.

15 Are you denying, Ms. Chung, that the members  
16 of Neighborhood Association received individual invoices  
17 for the common charges for their residences separate  
18 from the invoice you sent them for five years of common  
19 charges for CU-1?

20 ATTORNEY WENTZEL: Objection. It  
21 mischaracterizes her testimony. She is very clear  
22 in explaining her testimony --

23 ATTORNEY HODGE: There is no  
24 testimony. I'm asking her that question.

25 THE COURT: Repeat the question,

1 please.

2 Q. So, Ms. Chung, isn't it true that every member  
3 of the Neighborhood Association, every year gets a bill  
4 for an annual common charge assessment for their  
5 residence?

6 A. They are -- when they receive that bill,  
7 Attorney Hodge --

8 **(BOTH TALKING AT ONCE.)**

9 THE REPORTER: Excuse me.

10 THE COURT: Ms. Chung, start with  
11 a yes or no.

12 THE REPORTER: Thank you.

13 A. Um, no. Their maintenance fees come from  
14 their membership as Great Bay Condominium Owners  
15 Association.

16 Q. Don't everyone of them get a bill for common  
17 charges for their residence every year?

18 A. Because they are a member of the Great Bay,  
19 they get their prorated fare of the maintenance fees;  
20 yes, they do.

21 Q. Okay, that was one. So the end of that you  
22 said, *Yes, they do*. So the answer to the question --

23 **(BOTH TALKING AT ONCE)**

24 THE REPORTER: Excuse me.

25 THE COURT: Hold on, Ms. Chung.

1 Only one person can speak at a time, and then we  
2 have the court reporter who is reporting  
3 everything. So let's not get it confused for her.

4 One person at a time.

5 THE WITNESS: Yes, Your Honor.

6 THE COURT: Attorney Hodge.

7 ATTORNEY HODGE: Yes.

8 BY ATTORNEY HODGE:

9 Q. Ms. Chung, so the 288 members of Neighborhood  
10 Association are also members of your condominium  
11 association, correct?

12 A. (Non-responsive.)

13 Q. They are members of the Great Bay Condominium  
14 Association as well as being members of the  
15 Neighborhood Association?

16 A. That's correct.

17 Q. Okay. And everyone of your other Great Bay  
18 Condominium residential owners gets an annual bill for  
19 common charges for their residence from you, right?

20 A. I don't know.

21 Q. You don't know?

22 A. My terminology that I'm familiar with is  
23 maintenance fees.

24 Q. So you kind of like that term *maintenance*  
25 *fees*. Do you send a bill for maintenance fees to every

1 single residence owner in the Great Bay Condominium and  
2 the Neighborhood Association for their individual  
3 residence?

4 A. Yes.

5 Q. Do you have any authority to do that other  
6 than these Articles of Incorporation that we're looking  
7 at?

8 ATTORNEY WENTZEL: Objection.  
9 Calls for legal conclusion.

10 THE COURT: Overrule.

11 Answer the question, Ms. Chung.

12 THE WITNESS: Would you repeat  
13 it, Attorney Hodge, please?

14 BY ATTORNEY HODGE:

15 Q. Do you have any authority to bill your members  
16 quote/quote maintenance fees apart from your authority  
17 to charge common charges under your condominium  
18 documents?

19 ATTORNEY WENTZEL: Same  
20 objection.

21 A. I don't understand the word *common charges*.  
22 I'm not an expert on that. My terminology is  
23 maintenance fees.

24 Q. So, you're not an expert in common charges,  
25 but you're the president of the Great Bay Condominium

1 Association?

2 ATTORNEY WENTZEL: Objection.

3 THE COURT: Overruled.

4 **(ALL TALKING AT ONCE.)**

5 THE COURT: I missed your answer,

6 Ms. Chung.

7 A. No. Repeat your question please, Attorney  
8 Hodge.

9 Q. So you're not familiar with the term common  
10 charges, but you're the president of the Great Bay  
11 Condominium Owners Association, Inc.; is that right?

12 ATTORNEY WILCZYNSKI: Objection.

13 It misstates her testimony.

14 THE COURT: Overruled.

15 THE WITNESS: That's not what I  
16 said. I can't answer that.

17 THE COURT: She's asking a  
18 question. She is asking a question. Attorney  
19 Hodge is asking a question.

20 THE WITNESS: Can you ask it  
21 differently so I can understand it more clearly,  
22 Attorney Hodge?

23 THE COURT: It was clear and  
24 simple enough.

25 A. Would you state it again please, Attorney



1 Hodge?

2 Q. Are you saying that you are not familiar with  
3 the term common charges even though you are the  
4 president of the Great Bay Condominium Owners  
5 Association, Inc.?

6 A. Yes.

7 Q. Yes, that's what you're saying?

8 A. I'm saying I'm not familiar with it because  
9 I'm not -- The question is loaded; I think.

10 Q. Directing your attention if I may now to  
11 Section D of this article?

12 Were you aware that the rights of membership  
13 of membership in your association according to your  
14 Articles of Incorporation are to be established by the  
15 Recorder of Deeds of St. Thomas and St. John.

16 ATTORNEY WENTZEL: Objection.  
17 Relevance.

18 THE COURT: One minute.  
19 Sustained.

20 BY ATTORNEY HODGE:

21 Q. In determining whether you were issued these  
22 invoices for the CU-1 to the Neighborhood Association  
23 members, did you make any effort to determine what the  
24 records of the Recorder of Deeds Office of St. Thomas  
25 and St. John showed was the owner of records for that

1 unit?

2 A. No.

3 Q. You are aware that the deed from the  
4 Neighborhood Association, Inc. To the Great Bay  
5 Condominium Association was recorded in March of 2018;  
6 are you not?

7 ATTORNEY WENTZEL: Objection. No  
8 foundation.

9 THE COURT: Overruled.

10 A. Would you state the question again please,  
11 Attorney Hodge?

12 Q. You are aware that the deed from the  
13 Neighborhood Association Inc., to the Great Bay  
14 Condominium Owners Association for CU-1 was recorded in  
15 the Office of the Virgin Islands Recorder of Deeds in  
16 March of 2018; are you not --

17 ATTORNEY WENTZEL: Can we  
18 clarify, Your Honor? Is she talking about the deed  
19 that she received herself or some other deed?

20 ATTORNEY HODGE: This is an  
21 improperly interference in my cross.

22 THE COURT: The deed that she has  
23 in her safe.

24 ATTORNEY WENTZEL: Well, if it's  
25 in her safe, how could it have been recorded?

1                   ATTORNEY HODGE: Oh, please.  
2 This is the argument -- Your Honor, may we show the  
3 witness an exhibit then?

4                   THE COURT: Yes please.

5                   ATTORNEY HODGE: Show the witness  
6 Exhibit V.

7                   THE COURT: I'm sorry. Exhibit  
8 what?

9                   ATTORNEY HODGE: "V" as in  
10 Victor.

11                   THE COURT: Oh "V", okay. Yes.

12                   ATTORNEY HODGE: Just a minute  
13 since I have to get it up.

14                   THE COURT: Before we do that,  
15 Attorney Hodge.

16                   ATTORNEY HODGE: Yes, Your Honor.

17                   THE COURT: Does she have a copy  
18 of what was recorded at the Recorder of Deeds  
19 Office?

20                   ATTORNEY HODGE: When you say,  
21 *does she*, do you mean this witness?

22                   THE COURT: Yes.

23                   ATTORNEY HODGE: It was sent to  
24 her lawyer, Judge, March 23rd, 2018. So, I'm  
25 certainly going to ask her about that.

1 THE COURT: Okay. You may  
2 proceed.

3 ATTORNEY HODGE: Is it visible on  
4 the screen to the Court and the witness or not yet?

5 THE WITNESS: I see a letter that  
6 says, *Dear Mark...*

7 ATTORNEY HODGE: Okay.

8 ATTORNEY WILCZYNSKI: Your Honor,  
9 I would object to the witness testifying about  
10 anything relating to that correspondence as  
11 hearsay.

12 THE COURT: She can testify as to  
13 whether she -- well, no. The objection is  
14 overruled. She can testify.

15 ATTORNEY HODGE: Do you see the  
16 document marked as Exhibit V as in Victor,  
17 Ms. Chung, starting with this page.

18 Do you need me to scroll down?

19 A. I still got the letter from --

20 Q. Yes, exactly. Do you want me to scroll down  
21 to show you the rest of the exhibit?

22 A. Oh, I thought you were going to ask me about  
23 the exhibit.

24 Q. It is the exhibit. It's an exhibit with  
25 several pages. Do you want to see the entire thing?

1 A. If you're going to ask me about it --

2 Q. That's fine. This is the letter. These are  
3 the enclosures.

4 A. Okay.

5 Q. So the question is, have you seen this before?

6 A. I have not.

7 Q. You have not seen this? You haven't seen this  
8 letter to Attorney Wilczynski and the enclosures that  
9 are with it?

10 A. I have not.

11 Q. So, is it your testimony that you did not  
12 receive in due course a copy of a letter reflecting that  
13 the deed from Neighborhood Association to Great Bay had  
14 been recorded?

15 A. I received notice from our attorney that --

16 ATTORNEY WENTZEL: One second.

17 One second. I'm going to caution the witness not  
18 to disclosed what was told to her by her attorneys.

19 THE COURT: Yes.

20 So Ms. Chung, okay. There is  
21 attorney/client privilege. Do not testify as to  
22 the statements that were made between you and  
23 Attorney Wentzel or Attorney Wilczynski or anyone  
24 from any of the firms.

25 THE WITNESS: Okay. Thank you,

1 Your Honor.

2 THE COURT: You're welcome.

3 BY ATTORNEY HODGE:

4 Q. So the question is, Ms. Chung, is it your  
5 testimony that you were not aware that a recorded deed  
6 for CU-1 from Neighborhood Association to Great Bay had  
7 been transmitted to your attorney?

8 A. I don't understand that question.

9 Q. You don't understand the question?

10 A. That's right.

11 Q. It is your testimony today under oath that  
12 you're not aware of the fact that a deed from  
13 Neighborhood Association to Great Bay recorded in the  
14 Office of the Recorder of Deeds had been transmitted to  
15 your attorney. That's not a confusing question.

16 A. I am aware that a deed was filed. I am not  
17 aware that it is *the* deed that I have in my safe.

18 Q. Nobody asked you that.

19 A. Okay.

20 Q. The question was were aware of the fact that  
21 the Neighborhood Association had delivered to your  
22 lawyer a copy of a recorded deed from them to Great Bay  
23 Association for CU-1; were you aware of that?

24 ATTORNEY WILCZYNSKI: Objection.

25 Asked and answers.

1 THE COURT: Overruled.

2 A. No, I'm not aware of it.

3 Q. Well, what is it that you're aware of that you  
4 were just talking about a minute ago where you said you  
5 didn't know if it was the same deed?

6 A. I'm aware that NA filed the deed. I was not  
7 aware that we had this letter in our attorneys' records,  
8 this letter and attachments.

9 Q. When you are said you were aware that NA filed  
10 a deed, you mean you were aware the deed had been  
11 recorded, but were you weren't aware of this particular  
12 transmittal to Attorney Wilczynski?

13 A. I was aware that a deed had been recorded by  
14 the Neighborhood Association, a deed.

15 Q. A deed?

16 A. I was not aware -- I have not seen this  
17 document.

18 Q. So you were aware that Neighborhood  
19 Association had recorded a deed in your favor for CU-1,  
20 but you were not aware of this particular letter  
21 transmitting a copy?

22 A. I don't know what in my favor means. I'm  
23 sorry.

24 Q. To Great Bay. You were aware that  
25 Neighborhood Association had recorded a deed to Great

1 Bay Condominium Owners Association for CU-1; is that  
2 right?

3 A. I was aware they had recorded a deed, yes, a  
4 copy -- a deed, I guess.

5 Q. And when you say a deed I would like to make  
6 sure that we're talking about a deed for CU-1.

7 A. A deed for CU-1, but I have the deed in my  
8 file at my home.

9 Q. The question is, Ms. Chung, when you say you  
10 were aware of the fact that Neighborhood Association had  
11 recorded a deed for CU-1 to Great Bay Condominium Owners  
12 Association and you're saying that you're not sure if  
13 it's the same as the document that they sent you; is  
14 that right?

15 A. I'm not sure; that's correct.

16 Q. You personally haven't compared this deed  
17 which is marked Exhibit V which was sent to Attorney  
18 Wilczynski March of 2018 with the deed that was sent to  
19 you by Neighborhood Association in 2017 that you say  
20 it's in your safety; you haven't made that comparison?

21 A. I have not.

22 Q. Now in your interpretation of the condominium  
23 documents that basis for your assessments on the NA  
24 members, your contention is that it doesn't matter who  
25 owns the unit that the obligation to pay the annual



1 assessments or what I call the common charges remains  
2 with the Neighbor Association members; is that right?

3 A. It remains with the suite owners.

4 Q. In the word or the Neighborhood Association  
5 members who happens to own suites?

6 A. The suite owners of Great Bay Condominium  
7 Association who are members of NA.

8 Q. In fact, the members of Neighborhood  
9 Association are the only people to whom you sent these  
10 assessments to CU-1, correct?

11 A. That's correct.

12 Q. You didn't send assessments to the other Great  
13 Bay members who are not members of Neighborhood  
14 Association, did you?

15 A. Correct.

16 Q. And your position is that these members of  
17 Neighborhood Association is 200 and however many there  
18 are, are permanently responsible for those annual fees  
19 from now until eternity. Is that your position, no  
20 matter who owns the unit?

21 A. Would you state that again, please?

22 Q. That your position that the members of  
23 Neighborhood Association are responsible for the  
24 maintenance fees from now till entirety, no matter who  
25 owns the unit.

1                   ATTORNEY WILCZYNSKI: Objection,  
2 Your Honor to the use term of the hyperbolic term  
3 *to eternity*.

4                   THE COURT: Overrule.

5           Q.    What's your answer, Ms. Chung?

6           A.    Would you state that again please, Attorney  
7 Hodge?

8           Q.    Okay, the third time.

9                   It's your position as I understand it that  
10 the members of the Neighborhood Association are  
11 responsible for what you call the annual maintenance  
12 fees, the common charges for CU-1 from now until  
13 entirety no matter who actually owns CU-1; is that  
14 right?

15           A.    Well, I can't answer that; I'm sorry. I don't  
16 know what *from here to entirety* means.

17           Q.    You know what it means.

18                   THE COURT: Forever. Do they  
19 continue to pay these fees annually, year, after  
20 year, after year, forever.

21           A.    The suite owners are responsible for the  
22 maintenance fees for CU-1.

23           Q.    Forever?

24           A.    Until legally exchanged.

25           Q.    And how would that happen if ownership doesn't

1 have any effect on it?

2 ATTORNEY WENTZEL: Objection.

3 She is not a lawyer. Calls for legal conclusion.

4 THE COURT: Overruled.

5 Q. Can you answer it, Ms. Chung?

6 Anyway in your theory of this case, that the  
7 Neighborhood Association members can rid themselves of  
8 the obligation to pay these assessments?

9 ATTORNEY WENTZEL: Same  
10 objection.

11 THE COURT: Overruled.

12 A. When a suite owner sells their unit, they  
13 don't have the obligation anymore.

14 Q. If they're no longer a member?

15 A. Um-hum. No longer a member of the  
16 Neighborhood Association.

17 Q. But as long as they want to keep their units,  
18 they will owe this obligation in your interpretation  
19 forever; is that right?

20 A. A suite owner will be responsible as long as  
21 they are a member of Neighborhood Association, yes.

22 Q. And in your interpretation then, if these  
23 Neighborhood Association members don't want to be  
24 responsible to pay their common charges for CU-1 forever  
25 even though they don't own it and can't use it. The

1 only way to do that would be either to sell their unit  
2 if they can find someone who is willing to buy it, or  
3 become delinquent and let the mechanism that you  
4 described in your last memorandum just this month take  
5 over and they can transfer it to somebody who wasn't  
6 delinquent, right?

7 ATTORNEY WILCZYNSKI: Objection,  
8 Judge. Assuming facts that are not in evidence by  
9 mischaracterizing her testimony.

10 THE COURT: Sustained.

11 A. I don't know what memorandum you're asking  
12 about.

13 THE COURT: Sustained.

14 Q. Did you issue a memorandum to members of Great  
15 Bay Condominium Owners Association on November 16th,  
16 2021, saying that -- I am sorry.

17 Did you issue a memorandum to members of the  
18 Great Bay Condominium Owners Association saying that the  
19 people had been locked out of their units because of  
20 delinquency and they wanted to get rid of their units?  
21 You can pair them up with people who are willing to buy  
22 them?

23 A. Can you show me that document, please?

24 Q. Are you denying you did that?

25 A. I want to make sure I'm validating -- I'm

1 answering the document that you're talking about.

2 Q. So my question is, did you send any such  
3 document whether I have a copy of it or not? Did you  
4 send such a document to members of Great Bay?

5 A. Would you repeat which document you're talking  
6 about, Attorney Hodge please?

7 Q. Did you send a document to members of the  
8 Great Bay Owners Association saying that if people were  
9 delinquent and they were being locked out of their  
10 units, you can help them find somebody to buy their unit  
11 so they can free themselves of that obligation?

12 A. We would pair them up with members in good  
13 standing, but that has nothing to do with the  
14 maintenance fee. It is totally a different thing. This  
15 is the maintenance fee for CU-1, not for their  
16 residence. The residence and CU-1 are different.

17 Q. Right. The CU-1 are different, but the  
18 Neighborhood Association members are the only ones who  
19 are getting this additional bill for the maintenance  
20 fees for CU-1, correct?

21 ATTORNEY WENTZEL: Objection.  
22 Repetitive.

23 ATTORNEY HODGE: Excuse me.

24 THE COURT: Overruled.

25 Q. The Great Bay members are not getting that

1 assessment, correct?

2 A. You mean -- let me clarify. You're speaking  
3 of the bill that we sent out on October 22nd?

4 Q. Yes, the CU-1 assessment, right?

5 A. The other the people who owns two bed room  
6 suites and three bedroom -- I mean, two bedroom  
7 residences and three bedroom residences did not receive  
8 that bill because they're not responsible for the --  
9 because they're not responsible for CU-1.

10 Q. They are not members of Neighborhood  
11 Association, right?

12 A. They are not.

13 Q. And members of the Neighborhood Association  
14 want to get out from under this eternal obligation to  
15 pay common charges, this proposal you have will allow  
16 them to match up with people who are in good standing so  
17 they can sell their units and be free?

18 ATTORNEY WILCZYNSKI: Objection.  
19 She mis-states her testimony.

20 ATTORNEY HODGE: I'm not saying  
21 it's her past testimony. It's a new question.

22 THE COURT: Overruled.

23 ATTORNEY WILCZYNSKI: You said  
24 eternal.

25 ATTORNEY HODGE: Yes.

1           A.    I don't -- I don't know.

2           Q.    You don't know if they could match up that way  
3 and get out of that problem?

4           A.    I don't know what -- They would not receive a  
5 bill for the next year, but they will probably still be  
6 responsible for the bills that are there; I don't know.

7           Q.    I didn't even understand that.

8                         So you're saying that if the Neighborhood  
9 Association members sold their interest to somebody else  
10 at Great Bay, one of your other members, those selling  
11 the Neighborhood Association members would still be  
12 responsible for this bill you sent them?

13          A.    They would be -- they could be delinquent for  
14 the bill.

15                         ATTORNEY WILCZYNSKI:  Objection,  
16 Your Honor.  Outside the scope.

17                         THE COURT:  Overruled.

18          Q.    What is your answer to that, Ms. Chung?

19          A.    Would you restate the question, please?

20          Q.    Are you saying that it's the Neighborhood  
21 Association members who got these invoices from you,  
22 sold their units to one of your Great Bay members, they  
23 would still be responsible for paying these assessments  
24 for CU-1?

25          A.    The bill would still be outstanding.  Somebody

1 has to pay it. That's a transaction -- That bill would  
2 still be outstanding if it's not paid.

3 Q. I'm going to ask you a different question.

4 Is it correct that Great Bay Condominium  
5 Association since you've been the president, since 2017  
6 has used the CU-1 unit for special events and other  
7 activities that you've conducted?

8 A. We've used it for board meetings.

9 Q. And in addition to board meetings, have you  
10 used it for special events by places where you had a  
11 chef come in and do dinners and things like that?

12 A. We made it available for our chefs to have  
13 dinners up there for members of Great Bay.

14 Q. So you've done that, as well?

15 A. We have. And the purpose of that --

16 Q. I didn't ask you the purposes. I didn't ask  
17 you the purpose. And if your attorney is going to ask  
18 you may --

19 A. It is important.

20 Q. Well, it may be important to you, but for  
21 purposes of my question what's important has to do with  
22 legal issues. So, I want to ask you whether you've done  
23 that. And is it also correct that Neighborhood  
24 Association asked Great Bay for permission to use the  
25 CU-1 lounge for a members annual meeting and that you



1 denied them permission to do that?

2 A. That's correct; we denied them. They're a  
3 delinquent member.

4 Q. Okay. And just as a kind of a final line of  
5 questions here.

6 After the Court entered the temporary  
7 retraining order in this case, you communicated with  
8 Neighborhood Association members finally about it, and  
9 you indicated in that notice that some people had asked  
10 for refunds; do you remember that?

11 A. I don't recall that sentence exactly. I will  
12 have to look at the document.

13 Q. It is true that some Neighborhood Association  
14 members have asked for refunds of payment of assessments  
15 that they made in response to your invoices and your  
16 memorandum?

17 A. A few. A few.

18 Q. Is it true that -- And have you, in fact,  
19 refunded their assessments?

20 A. We have not.

21 Q. So even if the Court ordered that the invoices  
22 be rescinded, people who paid are just stuck. They are  
23 not -- they haven't been getting their money back?

24 A. I wasn't clear about of terminology rescind;  
25 it didn't say refund. Rescinded invoice didn't

1 translate in English to me to refund the payment.

2 Q. So if the invoice is rescinded, and there was  
3 no valid invoice, the fact that somebody had paid, it  
4 wouldn't have suggested to you that they're entitled to  
5 have their money refunded?

6 A. The word rescinded was not clear to me.

7 Q. But in any case, it's confirmed that you have  
8 not, in fact, refunded the money to anyone who paid that  
9 asked you to?

10 A. We have not.

11 Q. Sorry. Excuse me.

12 ATTORNEY HODGE: That's all I  
13 have for this witness, Your Honor.

14 THE COURT: Okay. All right,  
15 thank you.

16 Redirect.

17 ATTORNEY WENTZEL: Nothing.

18 THE COURT: All right. Thank  
19 you, Ms. Chung.

20 THE WITNESS: You're welcome.  
21 Thank you, Your Honor.

22 THE COURT: Okay.

23 ATTORNEY WILCZYNSKI: May she be  
24 excused, Your Honor?

25 THE COURT: Yes.

1                   You're excused, Ms. Chung. Thank you  
2 very much. Do have a good day. Happy Holidays.

3                   THE WITNESS: Thank you, same to  
4 you.

5                   THE COURT: Okay, thank you.  
6 Any rebuttal?

7                   ATTORNEY HODGE: I do have a few  
8 brief questions for Mr. Cutrona, Your Honor.

9                   THE COURT: Mr. Cutrona, please  
10 raise your right hand to be sworn, please. Your  
11 other hand.

12                   **SALVATORE CUTRONA**, having been  
13 first duly sworn as a witness, testified as  
14 follows:

15                   MR. CUTRONA: I do.

16                   THE CLERK: Thank you.

17                   **DIRECT EXAMINATION**

18 **BY ATTORNEY HODGE:**

19                   Q. Good afternoon, Mr. Cutrona.

20                   A. Good afternoon.

21                   Q. I wanted to ask you about what has been marked  
22 as Defendant's Exhibit V as in Victor.

23                   ATTORNEY HODGE: May I show the  
24 witness, Your Honor?

25                   THE COURT: Yes.

1 A. "V" like Victor.

2 Q. Yes. Do you see that?

3 A. Yes, I can see a letter dated March 23rd,  
4 2018, on your letterhead to Mark Wilczynski.

5 Q. Is that a letter that you recognize?

6 A. Yes, I believe you sent me a copy of that  
7 letter and the attachments to it when the deed was  
8 filed.

9 Q. Does the letter show a copy to you?

10 THE COURT: I'm sorry. What's  
11 that last question?

12 ATTORNEY HODGE: Does the letter  
13 show a carbon copy sent to you as the Neighborhood  
14 Association?

15 THE COURT: Oh.

16 A. Yes, it's the letter dated March 23rd. The  
17 first page says CC Neighborhood Association and that was  
18 delivered to me.

19 Q. I'm going to show you the enclosures now  
20 starting with this page. I'll just scroll down and you  
21 let me if you need to stop anywhere.

22 **(SCROLLS DOWN PAGES)**

23 Q. So Mr. Cutrona, are you familiar with those  
24 enclosures with the letter that's marked as Exhibit V?

25 A. Yes, I am.

1           Q. Can you verify that those are true and correct  
2 copies of the recorded deed and its attachments?

3           A. Recorded Condominium Deed which is the first  
4 three pages of the scroll is the recorded deed which was  
5 as stated.

6           Q. I just want to make sure before you go on with  
7 the authentication that attachment, are also part of  
8 the recorded deed?

9           A. Yes, the next attachment is the agreement and  
10 termination of the restaurant lease between the  
11 Neighborhood Association Inc., and the restaurant group  
12 and I believe they require Certificate of Good Standing  
13 by the Lieutenant Governor's Office with his seal or  
14 their seal is attached as well as an affidavit that you  
15 prepared and notarized along with the real property Tax  
16 Clearance Letter that was required before the deed would  
17 be recorded is attached.

18           Q. And was this recording of this deed done at  
19 your instructions?

20           A. Yes. We asked you on island to do it and as I  
21 remembered it, you personally went over to the Recorder  
22 of Deeds Offices several times to accomplish this.

23           Q. And apart from the attachments that are  
24 required by the Recorder's Office such as the Tax  
25 Clearance Letter, is the deed itself the same as the

1 deed you sent to Ms. Chung in September 2017?

2 A. Yes, the deed was as stated earlier. There  
3 were five copies executed by me and the witnesses as  
4 well as the notary because I was unsure as to whether  
5 each party as delivered to Ms. Chung and Mr. John Doyle  
6 if the residences needed to be original or not.

7 So to be safe, we had the five copies  
8 notarized; two went to them; one I kept and then the  
9 remaining went to you for filing of the deed and your  
10 records.

11 Q. And when you signed those five originals, were  
12 they all identical?

13 A. Oh, absolutely, yes.

14 Q. And were the same people witnesses for you?

15 A. Yes. And they even signed as I did all five  
16 copies as did the notary.

17 Q. And same notary notarized all the five  
18 originals that you executed?

19 A. That's correct.

20 Q. Was that all done on the same day?

21 A. It was all done on the same day and the only  
22 trip I made to a notary to do that.

23 Q. And I have one other question for you,  
24 Mr. Cutrona. It has to do with a memo from Great Bay.

25 ATTORNEY HODGE: May we show the

1 witness what's been marked as Exhibit O, Your  
2 Honor?

3 THE COURT: Yes. I need to be  
4 clear, Attorney Hodge.

5 ATTORNEY HODGE: Yes, Your Honor.

6 THE COURT: There are five  
7 originals or five copies of the originals -- the  
8 originals notary -- the original is the notary's  
9 signature on each copy?

10 Do you understand, Attorney Hodge?

11 ATTORNEY HODGE: That question is  
12 for Mr. Cutrona, correct, Your Honor?

13 Just confirm for the Judge, if you  
14 would, Mr. Cutrona, the answer to the question.

15 THE WITNESS: Yes, Your Honor,  
16 you're correct. There were five copies of the same  
17 document signed and executed by me and witnesses as  
18 well as the same notary public, all done at the  
19 same time.

20 THE COURT: All right. And this  
21 was done in Pennsylvania and a copy was  
22 subsequently sent to Mr. Doyle?

23 THE WITNESS: Mr. John Doyle.

24 THE COURT: Mr. John Doyle. You  
25 retained a copy for yourself and the three other

1 copies and a copy to Attorney Hodge and what else  
2 or whom else?

3 THE WITNESS: The president of  
4 the GBCOA, Mr. John Doyle got a copy, as Your Honor  
5 said. Ms. Abby Chung then was acting as a  
6 vice-president of the Great Bay who also received a  
7 copy at her home. I retained a copy, and a copy  
8 went to Attorney Hodge, and the fifth copy went to  
9 our then secretary, Mr. Mark Betesh (phonetically)  
10 because I was leaving the country on vacation.

11 THE COURT: Okay.

12 So this was mailed back to Attorney  
13 Hodge and then the deed was recorded on March 6th,  
14 2018, in the Recorder of Deeds Office here on  
15 St. Thomas. Is that -- is that it?

16 THE WITNESS: That is my  
17 understanding because the deed on our behalf was  
18 taken to the Recorder's Office by Ms. Hodge --  
19 Attorney Hodge.

20 THE COURT: And then Attorney  
21 Hodge, a copy of the recorded deed was subsequently  
22 sent to Attorney Wilczynski on March 23rd, 2018.

23 ATTORNEY HODGE: Correct. The  
24 one sent to Attorney Wilczynski on the 23rd of  
25 March was a photo copy of the original that we



1 recorded at the Recorder of Deeds Office on  
2 March 6th. That's why the cover letter says,  
3 enclosed is a copy of the date-stamped deed. We  
4 sent him a copy of the Recorder's.

5 THE COURT: All right, thank you  
6 that's clearer.

7 ATTORNEY HODGE: I need to go  
8 into my records again, if I may?

9 Sorry for the delay, Judge. Sorry, I  
10 am just trying to make this show up, sorry.

11 THE COURT: I'm sorry?

12 ATTORNEY HODGE: I'm having the  
13 hardest time making this appear on the screen. I  
14 apologize to everyone for the delay.

15 THE COURT: It's okay.

16 BY ATTORNEY HODGE:

17 Q. Can you see this document, Mr. Cutrona?

18 A. Yes, I see a Great Bay Condominium letterhead  
19 dated November 16th, 2021, as sent to the members of the  
20 Neighborhood Association which would be the suite  
21 interest owners of GBCOA.

22 Q. And is this, in fact, a memo that you received  
23 as a member of the Neighborhood Association from Great  
24 Bay?

25 A. It is. It was e-mailed on November 16th of

1 2021 and dated such, as well.

2 Q. And I just want to direct your attention to  
3 the last paragraph of this memo. This would have been  
4 within two days after the Court entered the temporary  
5 retraining order.

6 Do you see that final paragraph there?

7 A. I do.

8 Q. Would you just read that, please?

9 ATTORNEY WENTZEL: Objection.  
10 This is not rebuttal.

11 THE COURT: Attorney Hodge, I was  
12 just going to ask you, what is he trying to rebut  
13 that Ms. Chung stated?

14 ATTORNEY HODGE: We asked  
15 Ms. Chung whether people got any refunds and she  
16 said, no and also about the testimony of Mr. Doyle  
17 about that. The purpose of this, Your Honor, is to  
18 show that what Great Bay sent to Neighborhood  
19 Association members after the temporary retraining  
20 order was entered was a letter saying number one,  
21 it must haven't been processed or being held. But  
22 also that further information would follow after a  
23 court hearing currently scheduled for Friday,  
24 November 19th.

25 And the significance of this, we're

1 going to submit Your Honor, is that it suggests  
2 that Great Bay has not told Neighborhood  
3 Association members what happens at the conclusion  
4 of this hearing and therefore then it leaves them  
5 in a position where all of the debts that were  
6 previously outstanding remain outstanding.

7 ATTORNEY WENTZEL: Objection.  
8 It's not rebuttal.

9 THE COURT: Okay. So who  
10 testified -- is this testimony based upon Ms. Chung  
11 or Mr. Doyle? I'm trying to understand.

12 ATTORNEY HODGE: I think this  
13 responds to both Mr. Doyle and Ms. Chung and their  
14 testimony about what was done with the temporary  
15 retraining order.

16 I mean, it is not a hugely critical  
17 exhibit for us, Your Honor. I don't have any  
18 reason to kind of throw myself down about it. If  
19 the Court doesn't think it's appropriate rebuttal,  
20 I'm willing to forego it.

21 THE COURT: Okay. All right.  
22 Let it go.

23 ATTORNEY HODGE: Okay.  
24 That's all I have for this witness,  
25 Judge.

1 THE COURT: Okay.

2 **CROSS-EXAMINATION**

3 **BY ATTORNEY WENTZEL:**

4 Q. Mr. Cutrona, when you were looking at  
5 Defendant's Exhibit V and you were testifying about the  
6 enclosures there including the letter relating to the  
7 payment of the taxes that was required before the deed  
8 could get recorded.

9 When did NA pay those taxes?

10 A. Um, they were paid um, before the deed was  
11 recorded because they required it. And, in fact --

12 Q. My question is, when did NA pay it?

13 A. When did NA pay it? According to the real  
14 property Tax Clearance Letter, it was paid on March the  
15 5th, 2018 or at least it's dated that.

16 Q. So at the time that you sent the other  
17 original of the five originals to Abby Chung, those  
18 taxes on CU-1 were still outstanding, correct?

19 A. We had never been charged taxes as the  
20 Neighborhood Association.

21 Q. That's not my question. My question is, the  
22 taxes that were paid on March 5, 2008, were outstanding  
23 on that property at the time you sent the deed to  
24 Ms. Chung, correct?

25 A. I don't --

1                   ATTORNEY HODGE: Excuse me one  
2 moment please, if I may?

3                   Mr. Cutrona should be permitted to  
4 answer the question as he began to in saying that  
5 they had never received any bill for any property  
6 taxes. To say they were outstanding and not allow  
7 him to answer that, is not proper.

8                   ATTORNEY WENTZEL: Your Honor,  
9 just the same way --

10                  THE COURT: Let him say that.  
11 Let him testify. You're giving him the answer, but  
12 let him testifying, Attorney Hodge -- I'm sorry,  
13 Attorney Wentzel.

14                  ATTORNEY WENTZEL: Yes. My  
15 question wasn't about that, Your Honor. My  
16 question was, isn't it true that those taxes that  
17 were paid on March 5, were outstanding in  
18 September 2017?

19                  ATTORNEY HODGE: That was my  
20 objection.

21                  THE COURT: That's what she's  
22 objecting to, outstanding not by an NA Association  
23 is what she's saying.

24                  ATTORNEY WENTZEL: No, no, no.

25                  THE COURT: Maybe by GBCOA. I

1 don't know, but she's saying not outstanding as a  
2 result of it not paying it earlier.

3 ATTORNEY WENTZEL: I'm not asking  
4 whose responsibility it was to pay it. These are  
5 taxes on the property, and all I'm establishing is  
6 that these taxes on the property existed and were  
7 unpaid in September 2017; isn't that true?

8 ATTORNEY HODGE: So the nature of  
9 the objection is that the witness should be  
10 permitted to answer as he began to about that.

11 THE COURT: Okay. Let him  
12 respond.

13 Mr. Cutrona?

14 THE WITNESS: Yes, Your Honor.  
15 Thank you.

16 The Neighborhood Association since its  
17 inception since 2006 never received a tax bill from  
18 the Virgin Islands and therefore we have never paid  
19 taxes because of our not for profit status. Given  
20 the turmoil in the office, at the time of trying to  
21 get it recorded post Irma and Maria, I must say  
22 that I'm at awe at what the Recorder of Deed Office  
23 did, Your Honor. They had not the capacity to  
24 validate that. And so when Attorney Hodge told us,  
25 I said do whatever you have to do now to get it

1 recorded in which case we reluctantly paid it and  
2 left it for future to get resolved and refunded  
3 thank you, Your Honor.

4 ATTORNEY WENTZEL: Your Honor, I  
5 object to his testimony about what the Recorder of  
6 Deed Office could do or did do.

7 THE COURT: Sustained.

8 BY ATTORNEY WENTZEL:

9 Q. Mr. Cutrona, the Ritz Carlton is the  
10 management company for the Neighborhood Association,  
11 correct?

12 A. Yes, that's correct.

13 Q. And it was the Ritz Carlton that paid these  
14 real estate taxes on CU-1 on NA's behalf prior to the  
15 time you sent the deed to Ms. Chung, correct?

16 A. I just stated -- First of all, the Ritz  
17 Carlton doesn't pay any of our bills. We pay our bills,  
18 sir, number one.

19 Number two, we never paid a tax bill, in  
20 fact, during this trying to get it recorded, we went  
21 back to the management company through Marriott Vacation  
22 World Wide Corp., and validated that the fact that they  
23 never and we never paid --

24 ATTORNEY WENTZEL: Objection,  
25 Your Honor. The witness can't testify about what

1 the Ritz Carlton said or didn't say in connection  
2 with this. That is definitely --

3 **(SPEAKING ALL AT ONCE.)**

4 THE COURT: Sustained.

5 ATTORNEY HODGE: But Your Honor,  
6 Mr. Wentzel is --

7 ATTORNEY WENTZEL: I am going to  
8 ask another question.

9 THE COURT: All right, just one  
10 person. I sustained the objection.

11 ATTORNEY HODGE: Very well, Your  
12 Honor. But I do want to note, Your Honor, that  
13 Mr. Wentzel should not be simultaneously entitled  
14 to insist that Mr. Cutrona admit that the  
15 Neighborhood Association bills were being paid for  
16 this by the Ritz Carlton and then not allow him to  
17 answer that they were not on the basis that he is  
18 familiar with. He has to be able to answer that.

19 ATTORNEY WENTZEL: The objection  
20 is already sustained.

21 He can't testify to what Ritz  
22 Carlton said or didn't say. I can't cross-examine  
23 that statement. That person is not in court.

24 THE COURT: Okay. You can  
25 proceed.



1 ATTORNEY WENTZEL: All right.

2 BY ATTORNEY WENTZEL:

3 Q. Mr. Cutrona, you said NA pays all of its  
4 bills.

5 Do you have a check book that's on an account  
6 for the Neighborhood Association?

7 A. I'm sorry. I don't understand your question.

8 Q. How do you pay all your bills? Do you do it  
9 by check? Do you do it by cash? How did you pay them?

10 A. We -- Most all bills are paid through a system  
11 that we are allowed to use that allows to draw checks or  
12 transfer funds in our name from our account and that is  
13 facilitated by our director of finance, Ms. Marshal  
14 Latent Herman, who oversees the accounting staff that  
15 perform that.

16 Q. So you're saying that if we get the check that  
17 was used to pay the real estate taxes that was paid on  
18 March 5, 2018, that check is going to be a check in the  
19 name of the Neighborhood Association?

20 A. I couldn't tell you if it's going to be a  
21 check, Mr. Wentzel, or if it is going to be a wire  
22 transfer certificate. I'm unclear as to how the funds  
23 were transferred to the -- to the Lieutenant Governor's  
24 Office.

25 THE COURT: The substantive issue

1 there is whether NA would be the entity that's  
2 making the payment whether it's by check or wire  
3 transfer, I think that's what the substance of  
4 question is there.

5 ATTORNEY WENTZEL: I think what's  
6 clear, Your Honor, is that he doesn't have personal  
7 knowledge and that this issue has to await  
8 discovery on this merit related issue.

9 THE COURT: Okay.

10 ATTORNEY WENTZEL: All right.

11 BY ATTORNEY WENTZEL:

12 Q. You testified, Mr. Cutrona, that you signed  
13 these five originals and then you co-made the trip to  
14 the notary. Where's the notary located?

15 A. It's less than five minutes from my personal  
16 residence, in a strip mall close to the Motor Vehicle  
17 Licensing Registration Department Offices.

18 Q. In Pennsylvania?

19 A. Yes, sir. I live in Pennsylvania.

20 Q. Okay. What about Mr. Betesh? Did he go with  
21 you to the notary?

22 A. No.

23 Q. What about the other signatory on the deed?  
24 Did that other person go with you to the notary?

25 A. The other signatory on the deed?

1 Q. Yes. Who are all the signatories?

2 A. Well, Mr. Betesh was not a signatory on the  
3 deed. That's what I'm -- You're confusing me, sir.

4 Q. All right. Let's put the exhibit up.

5 A. It's on page 3 with the signatures.

6 ATTORNEY HODGE: Do you want me  
7 to put it up?

8 ATTORNEY WENTZEL: Yes, thank  
9 you.

10 ATTORNEY HODGE: Sorry, I have to  
11 find it. You want to be by the witnesses,  
12 Mr. Wentzel?

13 ATTORNEY WENTZEL: Scroll down a  
14 little. Okay, page 3. Okay, stop right there.

15 BY ATTORNEY WENTZEL:

16 Q. Okay. So, you're the one that signed the bill  
17 and these other people witnessed it?

18 ATTORNEY WENTZEL: Okay, I  
19 understand.

20 I don't have anything else, Your Honor.

21 THE COURT: Okay. All right.

22 Any redirect, Attorney Hodge?

23 ATTORNEY HODGE: No, Your Honor.

24 THE COURT: On this rebuttal

25 witness? Okay, thank you very much, Mr. Cutrona.

1 THE WITNESS: You're welcome,  
2 Your Honor. Thank you.

3 THE COURT: Okay, so with respect  
4 to the TRO itself, any arguments closing arguments  
5 on that?

6 ATTORNEY HODGE: I definitely  
7 would like some argument, Your Honor, if you would  
8 hear us?

9 ATTORNEY WENTZEL: Your Honor,  
10 could I ask for just a quick break here to, you  
11 know, use the facilities and I need some water.

12 THE COURT: Okay, five minutes.

13 ATTORNEY WENTZEL: Thank you,  
14 Your Honor.

15 THE COURT: You're welcome.

16 **(WHEREUPON, RECESS TAKEN)**

17 **(HEARING RESUMED AT 4:05 p.m.)**

18 THE COURT: So, am I to  
19 understand that the parties are seeking another  
20 hearing with respect to the actual merits or the  
21 details, the merits of this for a permanent  
22 injunction or -- or what?

23 ATTORNEY WENTZEL: Your Honor, if  
24 I can speak up for GBCOA?

25 The issue that's -- Our complaint seeks

1 cancellation of the deeds, and that's all that they  
2 seek. And on that issue, we have not had the  
3 benefit of discovery. There are pending motions in  
4 front of, Your Honor. And there are a number of  
5 other items that are relevant to the issue in terms  
6 of whether there were encumbrances on the CU-1 that  
7 Your Honor hasn't heard anything about.

8           There are settlements of litigation.  
9 There are contractual obligations related to the  
10 CU-1 that existed at the time and --

11           THE COURT: Okay --

12           ATTORNEY WENTZEL: And those  
13 things are the subjects of our complaint in front  
14 of Judge Tejo.

15           THE COURT: Understood. So for  
16 purposes of what we've done these past few days,  
17 we're sticking with the TRO that was filed by NA  
18 and the Court's determination as to whether the  
19 TRO needs to remain in place until the underlying  
20 cases is resolved or until what?

21           Attorney Hodge?

22           ATTORNEY HODGE: Okay. So Your  
23 Honor, our position is that this is the appropriate  
24 time the evidence is fully sufficient for the Court  
25 to determine that the temporary restraining order

1 should be converted to a preliminary injunction to  
2 remain in effect until the court decides the final  
3 merits of the case.

4           Our position is that contrary to what  
5 Attorney Wentzel is saying, it will turn out that  
6 it doesn't matter who prevails on this argument  
7 that they have that the deed should be found  
8 invalid for the purposes of the limited issues that  
9 are before you on the TRO, because the plaintiff  
10 has taken upon itself to assess the individual  
11 members of the Neighborhood Association, not NA as  
12 an organization with a personal obligation to pay  
13 this million dollars in retroactive assessments.

14           THE COURT: Doesn't the money  
15 come from them any which way?

16           ATTORNEY HODGE: Not any which  
17 way, Judge. Only if Neighborhood Association is  
18 found to be the owner the unit, if the Court  
19 determines that the deed that was recorded is not  
20 valid and concludes that title should remain in  
21 Neighborhood Association, at that point,  
22 Neighborhood Association will presumably be  
23 responsible for common charges and access its  
24 owners. But if at conclusion of the case, the  
25 Court determines that Great Bay is the owner, then

1 there will be no assessment on the Neighborhood  
2 Association members because there will be no  
3 responsibility that Neighborhood Association to pay  
4 those five --

5 THE COURT: No, no, that's not  
6 what I meant. What I meant was -- You're making a  
7 distinction between -- I'm not speaking about the  
8 authenticity or the acceptance of the deed. I'm  
9 speaking about the monies that are assessed. The  
10 invoices that were sent out. And if in fact to pay  
11 the invoices, the money still comes from not just  
12 the association because the association is not  
13 separate and apart from the persons involved in the  
14 association. The monies come from each individual  
15 through the association to pay for these invoices.  
16 That's what I was thinking.

17 ATTORNEY WENTZEL: If I could,  
18 Your Honor?

19 ATTORNEY HODGE: I think I was  
20 talking to the Judge. The point of dispute, Judge,  
21 is if at the conclusion of the case a point Your  
22 Honor has not reached yet. You decide that Great  
23 Bay is entitled to prevail in its claims, that this  
24 deed recorded from Neighborhood Association to  
25 Great Bay and 2018 is not valid. If you make that

1 decision on the merits in some point in the future,  
2 then it will follow that Neighborhood Association,  
3 Inc., a corporation is responsible for the common  
4 charges for this unit. If I --

5 THE COURT: I understand that. I  
6 understand that.

7 ATTORNEY HODGE: And if on the  
8 other hand, you rule that the deed is valid, then  
9 Great Bay will be the owner and it will be  
10 responsible for those common charges. If what Your  
11 Honor is saying is, if at the end of the case, you  
12 decide that Neighborhood Association Inc., is the  
13 owner, then will it not follow that Neighborhood  
14 Association, Inc., will assess its members for  
15 these amounts? And the answer is probably yes, but  
16 the problem with what has happened in this stage of  
17 the proceedings, Judge, is that in the middle of  
18 the case, without waiting for a determination that  
19 Neighborhood Association is the owner of the unit,  
20 Great Bay has taken it upon itself to jump over  
21 that and to assess the individual members of the  
22 association this full million dollar assessment.  
23 It is equivalent, Judge, in saying that if General  
24 Motor is obligated for something its stockholders  
25 can be personally held responsible for it.



1           The Neighborhood Association members at  
2 this point are clearly not responsible for this  
3 amount because there's no theory where they're the  
4 owners of the unit. It never has been and they  
5 are not now.

6           Even Great Bay doesn't claim that the  
7 Neighborhood Association members are the owners of  
8 condominium. And the statute in the Virgin Islands  
9 that we have cited and relied on in the case that  
10 we've been asked to put on the screen, in Title 28  
11 it is very explicit, Judge. The common charges are  
12 the responsibility of the owners of the condominium  
13 apartments and they must be assessed to them in the  
14 same percentage with the declaration says they own  
15 it. So Great Bay is not allowed to skip over that  
16 and assume that Neighborhood Association is the  
17 owner and then go beyond Neighborhood Association  
18 to make its members to pay these amounts now and to  
19 lock them out if they don't pay.

20           That's exactly the impropriety we're  
21 suggesting has occurred. It's occurred because  
22 Ms. Chung doesn't know what common charges are.  
23 It's occurred because Mr. Doyle was put in charge  
24 of doing the investigation and decided to ignore  
25 the parts of the Condominium Declaration that said

1 that only if -- the Neighborhood Association own  
2 the unit with its members responsible.

3           So what I would like to ask Your Honor  
4 to do is to hear from us today on the substance of  
5 this issue, that we've spent three days now hearing  
6 testimony about to establish that the Neighborhood  
7 Association members are not personally liable for  
8 these assessments.

9           That the determination of who owes the  
10 charges common charges CU-1 will rise or fall with  
11 whatever Your Honor decides that at the conclusion  
12 of this case about who is the valid owner of CU-1.  
13 It's either Great Bay is the owner because the deed  
14 was valid and it's recorded, or it's Neighborhood  
15 Association is the owner if you determine that the  
16 deed is not valid.

17           THE COURT: So essentially, what  
18 you're asking for is the TRO to remain in place  
19 until the end of the entire matter has been  
20 resolved.

21           ATTORNEY HODGE: Until you decide  
22 the case on the merits that there be a preliminary  
23 injunction. Both the TRO/the preliminary  
24 injunction leave in it place until you decide the  
25 merits on this pivotal question of who owns the

1 unit and not allow Great Bay to -- essentially,  
2 jump over that and assuming that the Neighborhood  
3 Association is the owner. Assume in effect that  
4 they've won and then make Neighborhood Association  
5 members individually liable for something that is  
6 not their obligation.

7 ATTORNEY WENTZEL: Can I respond,  
8 Your Honor?

9 THE COURT: Yes, you may.  
10 Thank you, Attorney Hodge.

11 ATTORNEY WENTZEL: They are  
12 trying to play it both ways.

13 Attorney Hodge says whether the suite  
14 owners are responsible for these assessments will  
15 rise or fall with whether -- with who is the owner  
16 of CU-1. But the evidence is unconverted actually  
17 shows the opposite.

18 NA has owned CU-1 since the developer  
19 transferred it and the developer -- It was  
20 testified by Mr. Doyle, gave them the bill. They  
21 transferred the building in 2006. That's the 5th  
22 Amendment to the main declaration.

23 THE COURT: So who paid the taxes  
24 at that time because you asked the question early  
25 about the taxes?

1                   ATTORNEY WENTZEL: That's  
2 separate. I don't want to get it mixed up with  
3 what I'm saying right now.

4                   THE COURT: Okay.

5                   ATTORNEY WENTZEL: The fact is  
6 that ever since the developer transferred to CU-1  
7 to the Neighborhood Association, the maintenance  
8 fees on CU-1 has always been paid by the suite  
9 owners, always.

10                   NA owned CU-1 and the suite owners paid  
11 the expenses, the maintenance charges for CU-1. So  
12 when Attorney Hodge says, well if you determine  
13 that GBCOA is the owner and therefore the  
14 obligation goes with it, they've not shown the  
15 Court any cases that say that, any language in the  
16 declaration that say that. They haven't asked for  
17 a declaration for that to be the case.

18                   They're maintaining that okay, it's  
19 undisputed that the suite owners have paid these  
20 charges for the last ten years. But it is also  
21 undisputed the suite owners individually didn't own  
22 CU-1 and they did. And yet the suite owners paid  
23 the maintenance charges through a second set of  
24 assessments.

25                   So transferring CU-1 does not answer

1 the question of are we basically responsible for  
2 the maintenance fees for CU-1 because all the way  
3 up until 2017, it was unrelated to the ownership.

4 The suite owners paid it when the  
5 developer owned it until December 2018, and then  
6 after that, NA owned it from 2008 to 2016, and the  
7 suite owners paid it when NA owned it.

8 So to say, that your determining of  
9 whether the transfer of this deed is valid will  
10 automatically answer the question on whether the  
11 suite owners remain responsible. That's not  
12 established, other than Attorney Hodge just say so.  
13 They haven't showed you any cases that say that  
14 would be the case. They haven't showed any  
15 language from the declarations that say that would  
16 be the case. And they haven't showed any facts  
17 because the facts show the opposite. The  
18 declaration states -- the member of the  
19 Neighborhood Association are solely responsible for  
20 CU-1's charges. And they paid it when they owned.  
21 They paid it when the developer owned it. So why  
22 would it change if now GBCOA owns it.

23 So I would respectfully submit, Your  
24 Honor, that the merits of this case would not --

25 THE COURT: They don't have use

1 of it, Attorney Wentzel. They don't have use --  
2 and this is what's quite disturbing. They don't  
3 have use of it. Ms. Chung testified that they were  
4 actually refused when apparently they may have made  
5 a request to use the lounge, and she refused them  
6 the opportunity to use the lounge.

7 ATTORNEY WENTZEL: I'll come to  
8 that --

9 **(BOTH SPEAKING AT ONCE)**

10 THE COURT: Yes. Well, that's  
11 basic, very basic premiss of not having use of  
12 something, but having to pay for it. It's, it's,  
13 it's not only troubling, but it just seems unfair  
14 for a lack of a better term at this point.

15 **(ALL SPEAKING AT ONCE.)**

16 ATTORNEY WENTZEL: Can I respond  
17 to the Court, Your Honor?

18 THE COURT: Okay. One question  
19 at a time please.

20 Let me hear what Attorney Wentzel is  
21 saying.

22 ATTORNEY WENTZEL: Section 920 of  
23 the Condominium Act, it says specifically that no  
24 apartment owner can exempt themselves from  
25 liability for his contribution to the common

1 expenses by waiver of the use or enjoyment of the  
2 property.

3 THE COURT: So the waiver of the  
4 use or enjoyment --

5 ATTORNEY WENTZEL: So you're  
6 saying that they're not using it. GBCOA used it a  
7 couple times.

8 THE COURT: I'm sorry?

9 ATTORNEY WENTZEL: That does not  
10 exempt them from having to pay.

11 THE COURT: No, but Attorney  
12 Wentzel, what you're telling me is this.

13 You're saying that if I'm renting an  
14 apartment for \$2,000 -- I entered into an agreement  
15 for an apartment for \$2,000 per month. You're  
16 saying that I have to pay the \$2,000 per month, but  
17 I do not have -- The landlord is precluding me or  
18 this other person is precluding me from utilizing  
19 or enjoying the apartment that I'm paying for every  
20 month. That's what you're saying in very simple  
21 terms.

22 ATTORNEY WENTZEL: No. What I'm  
23 saying is, they gave -- they gave up the use. They  
24 say, oh, you have it now and we're not going to use  
25 it anymore. That's the fundamental issue. They

1 say, well we sent you the deed and so we don't have  
2 to pay for it. And, in fact, they stopped offering  
3 any food or beverage services after that point.  
4 They voluntarily gave up the use of it, and now  
5 they're saying -- now when we sent you the deed,  
6 the obligation to pay the expenses -- If you have  
7 a house, and you have a mortgage payment and you  
8 have a homeowners assessment, if you go live in a  
9 second house you own, and you let somebody else in,  
10 somebody else comes in and use your house, that  
11 doesn't mean that you don't pay the homeowner fees  
12 anymore. You still have to pay it.

13           But the issue of whether or not these  
14 expenses follow the ownership is an issue of real  
15 property law. And your court has not heard  
16 anything about that. They've not -- the Court has  
17 not heard anything in the declarations that says if  
18 they transfer ownership, they no longer have to pay  
19 any of the expenses.

20           It's a question of property law. Are  
21 these restrictive governance? Do they run with the  
22 land? Your Honor has not heard any -- They have  
23 not cited any property law cases that say that  
24 would be case. There's nothing for Your Honor to  
25 conclude that if the transfer of the deed was



1 valid, that they don't have to pay the expenses  
2 anymore, now GBCOA does. They have not point to  
3 anything, no cases, no language in the declaration.  
4 There's only Attorney Hodge's assertion and that's  
5 it.

6 THE COURT: Okay.

7 Attorney Hodge, I'll hear from you, but  
8 then we're going to move towards the four factors  
9 of the TRO.

10 ATTORNEY HODGE: So Your Honor,  
11 it's hard to argue this case when it seems like  
12 Attorney Wentzel is kind of not listening to the  
13 evidence but on this issue on whether we have shown  
14 evidence that the responsibility for the common  
15 charges flows with owner. We pointed, Your Honor  
16 may remember, during the testimony of Mr. Doyle, a  
17 number of places in the declaration where it says  
18 that the responsibility of NA members to pay these  
19 assessments was while the NA owned the unit. It  
20 says while owned by it. We had them go through  
21 those provisions, Your Honor may remember it. And  
22 I asked you --

23 THE COURT: Yes, I remember that  
24 language, yes.

25 ATTORNEY HODGE: -- and only go

1 with the sections that you liked.

2 We also pointed the Court and Mr. Doyle  
3 and Ms. Chung to the fact that the Virgin Islands  
4 Codes says that a condominium owner is the one who  
5 is responsible for the common expenses and in this  
6 case, we know that the Articles of Incorporation,  
7 Great Bay say that the ownership is determined by  
8 the recorder of deeds. We know there is a recorded  
9 deed.

10 I know we had some strange exchanges  
11 about whether or not these people had seen it, but  
12 it's undisputed on the testimony and on the record  
13 before you that Neighborhood Association executed a  
14 deed in favor of Great Bay for CU-1, that they did  
15 that the September of 2017. That's Exhibit B, Your  
16 Honor. That they recorded it at the Office of  
17 Recorder of Deeds in March of 2018 and sent to  
18 Great Bay's attorney a copy of that recorded deed.

19 So it's undisputed on this record that  
20 the Title for CU-1, according to the records of the  
21 Virgin Islands Recorder of Deeds is in Great Bay.  
22 That means Great Bay is the owner of this unit  
23 according to admissible evidence in its own  
24 Articles of Incorporation and all the uncontested  
25 evidence. And according to the Virgin Islands Code

1 Title 28 Section 909, that means that they are  
2 responsible for the common expenses of this unit  
3 period, full stop.

4 Now, it's conceivable that at the end  
5 of the case, although I strongly suggest that  
6 wouldn't happen that the Court will determine that  
7 they each should somehow be voided, but that hasn't  
8 happened yet.

9 So the record right now establishes  
10 that the owner of this unit is Great Bay. That it  
11 is responsible as a matter of law for the common  
12 charges and it has taken it upon itself to assess  
13 the individual members of the former owner for  
14 those common charges to the tune of \$1 million.

15 And it is also disputed on this record  
16 that there is a collection mechanism in place to  
17 lock out the NA members from the use of their own  
18 residences if they don't pay this assessment to  
19 Great Bay while this case is being litigated.

20 The very purpose of a preliminary  
21 junction, Your Honor, is to preserve the status quo  
22 while the case is heard. If the Court concludes at  
23 the end of the evidence, as we think it will and  
24 should especially in view of what we've shown the  
25 evidence to be so far, that Great Bay is the owner

1 of this condominium unit, CU-1.

2           It's the one that has title at the  
3 Recorder of Deeds obviously. It's the only one  
4 that is using it as Your Honor has pointed out. It  
5 is the only one who uses it for its board meetings.  
6 It's the only one who uses it for special events.  
7 It denies Neighborhood Association the right to use  
8 it. It is the owner in every respect that matters.  
9 And if it is the owner, then it's a matter of law  
10 it's responsible for these common charges. That's  
11 the status quo.

12           And we would submit to the court for  
13 Attorney Wentzel to say there's nothing but my  
14 assertions to support this, simply ignores not only  
15 the evidence, but the statutory law. It ignores  
16 the sections of the condominium declaration that  
17 were focused on during the testimony.

18           As a matter of fact, I would say that  
19 the overwhelming and compelling evidence virtually  
20 undisputed evidence is that Great Bay is the owner  
21 of the unit and at that its condominium documents  
22 provide, properly interpreted under Title 28 that  
23 it is responsible for these common charges.  
24 There's virtually no basis produce assertion of a  
25 right to assess the NA members and indeed Ms. Chung

1 couldn't give you a basis. She, the president of  
2 Great Bay, doesn't seem to know what a *common*  
3 *charge* is. She just says they rely on advice of  
4 counsel. So it isn't as Mr. Wentzel is suggesting,  
5 it says my assertions.

6           Apparently, it's Great Bay taking the  
7 position that if their lawyers tells them so they  
8 are entitled to make this assessment.

9           So we would submit, Your Honor, that  
10 the evidence fully supports our request and I'm  
11 prepared to go through the core elements with the  
12 Court and to demonstrate in more detail why we  
13 think we're entitled to this.

14           THE COURT: Ms. Chung was  
15 unimpressive to say the least and it appears as if  
16 this is matter of Great Bay Condo Association being  
17 the powerful or the more powerful association here  
18 imposing these fees and these assessments because  
19 they can do so and that's it. That's how it  
20 appears thus far.

21           ATTORNEY WENTZEL: If I can  
22 respond on these issues before we go to four  
23 factors.

24           Attorney Hodge who says that the Virgin  
25 Islands Condominium Act says that the common

1 charges have to be paid by everyone. CU-1 is not a  
2 common charge.

3 THE COURT: It's a prorated  
4 charge.

5 ATTORNEY WENTZEL: They can't be  
6 conflated, Your Honor. CU-1 is not a common  
7 element and it's not a common charge. It's use is  
8 restricted to the suite owners by virtue of the  
9 declarations. And the only reason why GBCOA ever  
10 had any access to it, was pursuant to contractual  
11 arrangements where we actually paid for it in the  
12 form of a waiver of the CU-1 assessments. So it's  
13 not a common charge.

14 THE COURT: Is it still a fee  
15 that has to be paid by 288 members?

16 ATTORNEY WENTZEL: The CU-1's  
17 share -- the maintenance charges for the whole club  
18 is required to be paid by the suite owners and them  
19 alone that's what the declaration states. And they  
20 have not showed you any language in the declaration  
21 that would change that. It's in the Fifth  
22 Amendment that we read to the court. When they  
23 talk about well there's language that says, oh well  
24 they only have to pay -- while it's owned by it,  
25 referring to NA paying the cost while it's owned by

1 it. Those preceded the amendments that actually  
2 brought CU-1 over to the Great Bay Condominium.

3 The amendments that brought CU-1 over  
4 to the condominium are the Fifth Amendment to the  
5 main declaration and that language is not in that  
6 one. This is our summary judgment motion and all  
7 of the cases that are cited in there. A subsequent  
8 amendment of the declaration to the extent it's  
9 inconsistent with the prior version, it supercedes  
10 it. That's the whole point for our motion for  
11 summary judgment.

12 So, prior versions of the language of  
13 the declaration don't control. The actual  
14 instrument that convey CU-1 to the Neighborhood  
15 Association and to the condo development say that  
16 it's exclusively the responsibility of the suite  
17 owners and there's nothing in the declaration  
18 that's been identified that says that would not be  
19 the case if somebody else owned it.

20 THE COURT: And this is all as  
21 determined as GBCOA, right?

22 ATTORNEY WENTZEL: GBCOA has the  
23 authority to make assessments and to enforce the  
24 declaration. Of course, they had that authority.

25 THE COURT: This is what I'm

1 saying. And this is what I'm saying. It seems to  
2 be grounded in GBCOA's hour as the more powerful  
3 entity here, apparently.

4           Clearly, Ms. Latent Herman, her  
5 testimony with respect to they, "they" as the  
6 management company not wanting to get involved, it  
7 spoke volumes to this court in the sense that they  
8 did not want to be a part of something that they  
9 probably felt was for a lack of a better term  
10 again, unfair.

11           They set out that situation. GBCOA on  
12 their own try to develop ways contracting directly  
13 with Concord to issue these assessments. This is  
14 something that they did on their own.

15           ATTORNEY WENTZEL: Yes, they have  
16 the power to issue assessments. And the  
17 declaration states that you have to pay them  
18 pending any dispute, and that's exactly what the  
19 court said in the Towers Condominium case 32 Virgin  
20 Islands Report 185. That's exactly what were the  
21 facts in that case. And the Court said -- The  
22 declaration that everybody signed up for say that  
23 you have to pay the assessments when they're issued  
24 pending any dispute.

25           You can't go to court and get an



1 injunction against paying your debt. You have to  
2 find some other remedy. And it cites a number of  
3 cases from other jurisdictions because that's the  
4 rule every where.

5           The language is very clear that  
6 you have to pay an assessment that comes down from  
7 the GBCOA. Even if you dispute it, you have to pay  
8 the assessment and then seek a remedy.

9           THE COURT: And hopefully one day  
10 they'll get a refund if they are successful  
11 sometime in the future.

12           ATTORNEY WENTZEL: That's right.  
13 That's exactly right.

14           We're talking about \$750 a year per  
15 suite owner of the assessment that's involved here.  
16 They pay 13 or 14 -- this year, \$15,000 in annual  
17 fee only.

18           THE COURT: Does it make a  
19 difference that it's what, I think it says less  
20 than 5 percent of the total. Does it really make a  
21 difference as to how much? It could have been a  
22 dollar. The point is, it just seems so, you know,  
23 unfair and so -- but let's move on from this and  
24 I'll take the arguments from the plaintiff -- I'm  
25 sorry, from the defendant with respect to the four

1 factors.

2 ATTORNEY WENTZEL: Right.

3 **ARGUMENTS OF FOUR FACTORS BY DEFENDANT**

4 ATTORNEY HODGE: So, Your Honor,  
5 the four factors for converting the temporary  
6 retraining order to a preliminary injunction are:

7 First, whether the movement has shown a  
8 reasonable probability of success on the merits.

9 And on that issue the statute, I submit, Your  
10 Honor, Section 909 is essentially conclusive and it  
11 says that common expenses shall be charged to the  
12 apartment. There is no question in this case that  
13 GBCOA has assessed not the owner of CU-1. No  
14 matter who wins the case, they have not assessed  
15 the owners. They haven't assessed NA, and they  
16 haven't assessed themselves. They've assessed  
17 these individuals who are not the owners and  
18 therefore the assessment is illegal under the  
19 statute.

20 In addition, there are all the other  
21 arguments about the fact that their interpretation  
22 of the declaration is completely unreasonable and  
23 as the Court says unfair.

24 It ignores all the provisions in the  
25 declaration that says that this obligation of the

1 members to be subject to assessment by NA is while  
2 NA owns the unit. It ignores the fact that the --  
3 I'm sorry. It ignores the fact that the  
4 interpretation they've applied is irrational  
5 because the concept of these people being subject  
6 to liability for these assessment eternally is  
7 irrational. And we cited in our memorandum, Your  
8 Honor, the fact that contracts are not to be given  
9 an irrational interpretation.

10           So, here where Mr. Doyle took the  
11 provision and the declaration that he liked that  
12 provided for payment by the members of NA of these  
13 assessments and ignored the provisions that said  
14 would apply only while the unit was owned by NA.  
15 And the coupled with the fact that it's an  
16 irrational interpretation and it cannot conceivably  
17 be correct.

18           These poor people will be subject to  
19 paying these dues from now until eternity. Even if  
20 Great Bay is the owner or someone else, (Bill Gates  
21 is the owner) is irrational. They've ignored the  
22 parts of the declaration that go against them.  
23 They've ignored the fact that it's irrational and  
24 they've ignored most critically the statute that is  
25 directly dense. They are not to the notion that

1 they can assess members with common charges.

2           Mr. Wentzel is quite wrong if he says  
3 that these assessments are not common charges. We  
4 know that because number one the invoices  
5 themselves that start with our Exhibit A is one of  
6 the invoices. It refers to these as annual  
7 maintenance fees.

8           Mr. Doyle testified, I think before  
9 they got a chance to, you know, talked him into  
10 something else, that maintenance fees, annual  
11 maintenance fees all of their terms that they use  
12 in there. *Dues* are exactly the same as *common*  
13 *charges*. That is the amount that each individual  
14 condominium owner pays to support the common  
15 expenses of the property, its administration,  
16 insurance and so on.

17           And you can see, Your Honor, from the  
18 budget that was in the document that's Exhibit C  
19 which was the memo from the Ritz to the members  
20 telling people that they had to pay these amounts  
21 or they will be locked out, but that's the Great  
22 Bay budget. That's their budget for operating  
23 themselves. That's their budget for paying their  
24 lawyers. It's their budget for paying their  
25 insurance. It's their budget for maintaining their

1 grounds. It's the budget for common charges and  
2 that is what Section 909 says. It has to be  
3 charged to the apartment owners according to the  
4 percentage of their undivided interest and the  
5 common areas. Those percentages show up in the  
6 declarations. That's what Great Bay has to do if  
7 they want to try to collect these charges now  
8 instead of waiting for the end of the case.

9           So on the merits, both on the tense  
10 that the declaration properly construed and the  
11 statute being controlling, we submit to the Court  
12 that Neighborhood Association has clearly made it  
13 an inadequate showing that it's likely to prevail  
14 on the merits.

15           And the second test in the case law is  
16 whether the movement can show that it is likely to  
17 be irreparably injured by denial of the release.  
18 On this point, Judge, I actually need to apologize  
19 to the Court because in my memorandum and support  
20 of the motion for temporary restraining order, in  
21 Footnote 5, I actually said that the Virgin Islands  
22 Supreme Court had not yet reached an opinion on  
23 exactly how it was going apply to the Court for a  
24 part test. And whether or not I was going to use a  
25 sequential method where they decide first on the

1 likelihood of success on the merits and then  
2 irreparable harm and so on. But actually, the  
3 Supreme Court has decided that Judge and case is  
4 3RC & Company Inc., vs. Boynes Trucking Systems,  
5 Inc.

6 THE COURT: I think that's from  
7 2012.

8 ATTORNEY WENTZEL: Fifteen,  
9 Judge.

10 ATTORNEY HODGE: 2015.

11 THE COURT: 2015, okay. Yes,  
12 that it's a sliding scale.

13 ATTORNEY HODGE: Exactly. And  
14 the interesting thing in that case is that the V.I.  
15 Supreme Court said that the test is whether  
16 irreparable harm is likely without the injunction.

17 So, the question for the Court is  
18 determine whether the movement is threatened with  
19 some injury for which he has no legal -- adequate  
20 legal remedy. That's what the Supreme Court says  
21 in 3RC. And as to whether or not Neighbor  
22 Association members are likely to be irreparably  
23 harmed without an injunction, I think the answer is  
24 certainly true because we know from the memorandum  
25 and exhibits in this case what the penalties are in

1 these corporate documents. They are being locked  
2 out of their own residences if they fail to pay;  
3 they're delinquent.

4           We heard the testimony of Mr. Tom Doyle  
5 who wants the court to believe that in an  
6 unrecorded meeting of Great Bay, they sat down  
7 together before they issued their invoices and  
8 decided they weren't going to lock people out. But  
9 the Court not required to credit that testimony,  
10 Judge. It's not credible because number one there  
11 is no writing about it, no minutes, no unanimous  
12 consent. And in the writings they did send out  
13 after they decided to impose this million dollar  
14 assessment, they made no mention of that, Your  
15 Honor.

16           We know that because Exhibit B which is  
17 their 4-page memorandum defending their decision to  
18 assess the NA members with this massive assessment.  
19 Four pages to talk about why they claim they had  
20 the right to do this, not a sentence or a phrase  
21 that says but if you don't pay we're not going to  
22 lock you out; or that says if you don't pay, we're  
23 not going to rent your place to somebody else; or  
24 if you don't pay, we're going to do any of the  
25 other extremely onerous things that the condominium

1 documents say they had the power to do.

2           What they did was, imbed a link at the  
3 end of the 4-page memorandum that -- sent people to  
4 the documents where they can see for themselves the  
5 penalties that can be imposed if they didn't pay.

6           And further more, this bill and this  
7 4-page memo was sent to them in the very same  
8 month, October of 2021 in which the management  
9 company had written the memorandum which Exhibit C  
10 saying to people, and I'm quoting now, *If you do*  
11 *not timely make payments of all amounts due and*  
12 *owing for common charges be quote locked out will*  
13 *be implemented and shall remain in place until all*  
14 *amounts due and owing including interest and late*  
15 *charges are paid in full,* close quote. That's  
16 Exhibit C page 2.

17           And remember interestingly,  
18 Ms. Chung said they wanted this bill to go out in  
19 October. That's why they rushed to get it out.  
20 They wanted it to go out the same month as the memo  
21 from the management company that told people about  
22 these really onerous penalties that would apply if  
23 they didn't pay.

24           And in Great Bay's own memo to the  
25 Neighborhood Association members, they specifically



1 said, now this is Exhibit B, Your Honor. These  
2 charges are quote delinquent assessments. This is  
3 the first time they're getting this bill. The  
4 Neighborhood Association members have never gotten  
5 a bill for this first bill.

6 THE COURT: It would be  
7 immediately deemed delinquent.

8 ATTORNEY HODGE: Exactly.  
9 Already delinquent and quote due immediately. So  
10 it's clear that Great Bay was saying to the  
11 Neighborhood Association members, you are in  
12 jeopardy of being locked out of your unit if you  
13 don't pay this immediately. And if there is every  
14 reason to believe, they would do that. Some people  
15 use the expression, Your Honor. They say, when  
16 somebody tells you who they are, believe them the  
17 first time.

18 When Great Bay sent this out, there was  
19 reason for the Neighborhood Association members to  
20 believe them because this was a clear message about  
21 what was going to happen if they didn't pay.

22 So all of those factors, I think taken  
23 together properly support a finding. The Supreme  
24 Court's language that this is a case in which you  
25 should and can make a finding that they are likely

1 to suffer this irreparable harm, if this  
2 preliminary injunction isn't granted.

3           There is quite a lot of case law and I  
4 wouldn't necessarily go through all, Judge, but  
5 being deprived of the use of real property is  
6 irreparable harm. They're a host of cases, but one  
7 Third Circuit case, Your Honor, it says where  
8 interest involving real property are at stake,  
9 preliminary injunctive relief can be particularly  
10 appropriate because of the unique nature of the  
11 property interest. And that is a case called  
12 Minard, M I N A R D Run Oil Company vs. U.S. Forest  
13 Service 670 F. 3d 236. That's the Third Circuit.  
14 But there are cases from every circuit and I  
15 wouldn't even be surprised if the plaintiffs would  
16 dispute that being deprived of the use of real  
17 property is irreparable harm.

18           THE COURT: Does this also refer  
19 to those that just have the 21-day -- just the  
20 interest of 21 days per year?

21           ATTORNEY HODGE: I don't actually  
22 have any cases specifically on interval ownership,  
23 Your Honor. I admit this is an unusual situation  
24 or me. But it seems to me that if somebody had  
25 bought an integral interest and they spent the

1 money to buy it. They're paying to use if every  
2 year. They're planning as Mr. Cutrona testified to  
3 come and spend their vacation there. That's the  
4 same kind of unique real property interest that  
5 somebody might have although on a larger scale, in  
6 a home, or an apartment, or on another real estate  
7 interest.

8           So, I think it's understandable that  
9 people who make that investment, that commitment to  
10 the Virgin Islands consider their real property  
11 interest special and unique to them. They didn't  
12 want to just come and rent a hotel and stay for  
13 two weeks. They wanted to have their own place  
14 where they knew they were coming back to. That's  
15 is what makes it unique and special and constitutes  
16 the irreparable harm.

17           So on the irreparable harm, Your Honor,  
18 I think that it is showing it is fully adequate and  
19 the argument from Great Bay, don't worry about it,  
20 you could just get your money back later, if you  
21 win some day. It's a horrendous solution. It's  
22 essentially, it's like extortion. It's saying, we  
23 wouldn't let you use your place unless, you pay us.  
24 And maybe some day if you prevail, we will give you  
25 your money back. That is not consistent with what

1 the law would expect.

2           And then the third element is whether  
3 granting a preliminary relief will result in  
4 greater harm to the non-payer. Clearly, that's not  
5 the case here because Great Bay has already taken  
6 upon itself to say if they're entitled to this  
7 money, they'll get interest and late fees, interest  
8 and late fees.

9           So, if the time comes that they're  
10 entitled to collect, which we don't think it's  
11 going to come, interest and late fees will be added  
12 at that point, and they'll be whole. So there's no  
13 irreparable harm to them whereas the people they  
14 are imposing this on are subject to serious  
15 irreparable harm.

16           And then the last element, Judge, is  
17 whether granting a preliminary relief will be in  
18 the public's interest. And we submit as we did in  
19 our memo that number one, the public interest is  
20 that the Court should rule consistent with our  
21 statutory law.

22           The Condominium Association should not  
23 be entitled to say, we don't know what the  
24 condominium law says. We didn't bother to read it.  
25 We don't need to know, what a common charge is, but

1 we should be allowed to do what we want if our  
2 Condominium Declaration says that.

3           The common interest -- I mean, the  
4 public interest is in having our laws enforced and  
5 having them respected, and having all organizations  
6 abide by our statutory laws, making sure that they  
7 do. Title 28 Chapter 33 is quoted throughout this  
8 Condominium Association documents and yet the  
9 people who have taken it upon themselves to make  
10 these assessments, none of them appeared to have  
11 even bothered to read it. They don't even know  
12 what the requirements are. They don't know what a  
13 common charge is.

14           So, the public interest we submit, Your  
15 Honor is with enforcement of rights statutes, to  
16 prepare treatment of people who come here to  
17 vacation, and who come with sufficient, frequency  
18 and consistency that they want to own as they say,  
19 *a piece of the rock*. And they don't want to be in  
20 danger of being locked out because they don't pay a  
21 massive assessment that the big association, the  
22 powerful association has taken it upon themselves  
23 to impose.

24           We have relied, Your Honor, on sections  
25 of the declarations, the statute of the Virgin

1 Islands and the Recorder of Deeds, and yet we're  
2 accused of saying that you should rule in our favor  
3 just on my say-so.

4           On the contrary, Your Honor, we're  
5 asking the Court to do what the law and equity  
6 calls for. And we're suggesting that disputing  
7 this on the basis of what attorney said is not  
8 correct. That any member should be protected until  
9 the case is decided, Your Honor. And the purpose  
10 of a preliminary injunction is to preserve the  
11 status quo until the Court can decide the final  
12 matter on the merits. There is no way to preserve  
13 the status quo or protect the Neighborhood  
14 Association members if this restraining order is  
15 allowed to expire because I submit to the Court  
16 that if that happens, the next day, the enforcement  
17 mechanism on these people will be in place.

18           THE COURT: They can only  
19 imagine.

20           ATTORNEY HODGE: Yes, exactly.  
21 Because not only is the so-called meeting where the  
22 decision not to lock them out was made, but never  
23 written down, not recorded anywhere, it's not  
24 binding on anybody.

25           The very next day, they could say, you

1 know, according to how they run things, oh, we  
2 changed our mind and we do want to lock you out if  
3 you don't pay. And what recourse would be for  
4 these people, absolutely none. So they need to  
5 look to the Court and they do look to the Court for  
6 this protection and we ask the Court to extend this  
7 as a preliminary injunction until, Your Honor  
8 reaches the final merits.

9 THE COURT: Thank you, Attorney  
10 Hodge.

11 Attorney Wentzel?

12 ATTORNEY WENTZEL: Your Honor  
13 looks at the 3R case versus Boynes Trucking which  
14 is 63 VI 544, what the Virgin Islands Supreme Court  
15 said there, is that a party seeking a preliminary  
16 injunction, it's not just that they have to show a  
17 threat of harm or that they have a reasonable  
18 belief of harm.

19 A party seeking an injunction has to  
20 show is that the injunction is quote necessary to  
21 avoid certain and eminent harm for which a monetary  
22 award does not adequately compensate. Certain and  
23 eminent harm, that's the primary -- someone seeking  
24 a preliminary injunction must make according to the  
25 Virgin Islands Supreme Court in the 3RC case. It's

1 a sliding scale, but this is the very threshold of  
2 it. You have to show that the injunction is  
3 necessary to avoid certain and eminent harm. And  
4 NA did simply not show that. The alleged harm and  
5 Attorney Hodge has been burned it again here in her  
6 closing argument is the block out of the use of  
7 their 21 days. It's the only irreparable harm  
8 that's alleged by NA in its motion papers. It's  
9 not that they might have to pay or that they have  
10 to pay and they have to get the money back later.  
11 There cannot be irreparable harm as a matter of law  
12 because it's just money.

13 THE COURT: Well, what about the  
14 testimony of Mr. Cutrona provided in terms of the  
15 airline tickets, in terms of friends and family  
16 members and the disruption and the embarrassment.  
17 Well, he didn't say embarrassment, but you know,  
18 but what about those factors that he had raised  
19 during his testimony?

20 ATTORNEY WENTZEL: I don't  
21 dispute or quarrel with that, Your Honor, but it  
22 assumes that they're going to get locked out if  
23 they don't pay the invoice.

24 THE COURT: But Mr. Doyle  
25 testified that the word *lockout*. He used to word



1     *lockout* in his testimony when there was the  
2     discussion with respect to whether the meeting that  
3     they had, whether it was reduced to writing, the  
4     minutes were reduced to writing, and you heard his  
5     testimony with respect to if it's something that  
6     they have not decided to do, affirmatively or  
7     whatever that they have not decided to do, then  
8     it's not in writing. They don't reduce it to  
9     writing. If it's nothing that they decided to do,  
10    then they reduce it to writing. But he did say and  
11    they did use -- There were four possible situations  
12    in terms of four different types of outcomes and  
13    one of them, he did state that they did discuss  
14    *lockouts*.

15                   ATTORNEY WENTZEL: No, he did  
16    not. He said that they discussed it and their  
17    decision -- their determination was that they were  
18    not going to pursue that as an enforcement method.

19                   THE COURT: My fear is that-- My  
20    fear, Attorney Wentzel, is that and I understand  
21    that -- My fear is that at any point in time, they  
22    can decide subsequently, they can decide that that  
23    is a measure that they would like to institute in  
24    the event that these invoices are not paid; that is  
25    fair.

1                   ATTORNEY WENTZEL: Actually, Your  
2 Honor, the acronym demonstrated the opposite  
3 GBCOA has no ability to lock anybody out. The  
4 board of directors of GBCOA cannot do that. That  
5 is uncontroverted in the record before the Court.  
6 It is done by the Ritz Carlton through their  
7 proprietary technology reservation system.

8                   THE COURT: Isn't that a phone  
9 call to the Cobolt Company? Isn't that the Cobolt  
10 Company? Isn't that just a phone call to the  
11 company from Ms. Chung or someone on the board of  
12 directors from GBCOA or even an e-mail or something  
13 to go that affect?

14                   ATTORNEY WENTZEL: No, the  
15 evidence before the Court is that it's only the  
16 management company, the Ritz-Carlton that can  
17 implement the lockout. And Ms. Latent Herman,  
18 that's the only person the Court has heard from for  
19 the Ritz-Carlton. She testified that there is no  
20 -- there was no steps taken to lock anybody out.  
21 She doesn't know -- even she doesn't know the  
22 mechanics of how it works. But she did admit that  
23 they weren't involved with this specific billing  
24 and assessment unlike the ones that were the  
25 subject of the letter. She has not heard from

1 anybody from GBCOA asking her, or approaching her  
2 as to lock anybody out.

3           Nobody else from Ritz-Carlton or her  
4 employer discussed with her locking out. And she  
5 admitted that all she had -- She had no ability to  
6 do anything other than speculate about it. She  
7 can't implement a lockout. She doesn't know how it  
8 works. So there is no testimony in the record  
9 about -- that would allow a finding of a certain  
10 and eminent harm in the form of lockout which is  
11 what the Court has to find.

12           The Court can't enter an injunction for  
13 something that is not eminent and certain in terms  
14 of a harm. To say well, in the future, they might  
15 ask the management company to lock someone out and  
16 the management company might go along with that.  
17 The Court can't make that connection. It has to be  
18 demonstrated by evidence and that evidence is not  
19 in front of the Court. We can't lock anyone out.  
20 That's what the Court heard. And there's no plans  
21 from anyone at Ritz-Carlton to lock anyone out.  
22 The Court also heard that. So they can't show.  
23 They haven't shown certain and eminent harm to an  
24 injunction that is not entered.

25           Also, with regards to the issue of

1 rescissions and refunds, that's money. The Court  
2 cannot enjoin collection of the debt. The Court  
3 cannot enjoin somebody against having to pay a  
4 bill.

5           It can't do any -- provide any relief  
6 with respect to the actual money involved in the  
7 assessments. All the Court could do in terms of an  
8 a injunction if the showing had been made would say  
9 okay you can't lock anyone out while the merits,  
10 the arguments are being decided. But there's no  
11 basis that even been asserted let alone cases cited  
12 to the court, that would say the court could order  
13 a rescissions of the bills or that the Court could  
14 order refunds of the bills. That's not in our  
15 complaint.

16           There is no pleading by NA in the  
17 counterclaim for declaration that they don't owe it  
18 or that it was ultra virus, or that they didn't  
19 have the power to do it. And in the absence of a  
20 pleading that sets forth facts, that entitles them  
21 to injunctive relief, the Court can't enter it, but  
22 in any event, the Court can't grant injunction  
23 relief as to money.

24           Lockout is the only thing that the  
25 Court couldn't grant injunctive relief, but as I

1 showed and as the proof has demonstrated, they have  
2 not established that lockout is an eminent and  
3 certain harm that will occur if the injunction is  
4 not entered.

5           If it happens in the future, then they  
6 can come back to court and get an injunction at  
7 their time, but the Court should not be entering an  
8 injunction against something theoretical based on  
9 speculation as to what might happen in the future.

10           Now, the reason that the Court  
11 shouldn't enter any injunction with regard to  
12 lockout is because there is no evidence that that's  
13 going to occur. It's an advisory ruling that  
14 they're asking the Court to make in the absence of  
15 any evidence that that will in fact occur. That it  
16 is certainly eminent if the Court does grant the  
17 injunction.

18           On the likelihood of success going to  
19 that factor, it's eminent harm, certainly eminent  
20 harm is the primary factor is what the Supreme  
21 Court has said and that's lacking. But they also  
22 have to show the 3-hour case says, they also have  
23 to make a showing of likelihood a success. And  
24 they haven't done that here for two reasons. The  
25 first reasons is as I said, they don't have a claim

1 anywhere in the case for injunctive relief relating  
2 to lockout or anything else.

3           They've not cited any authority, that  
4 says that the Court can enter an injunction when no  
5 affirmative claim for injunctive relief or  
6 affirmative claim based on facts that would want  
7 injunctive relief are raised in the pleadings.  
8 That's not the case here. And the United States  
9 Supreme Court said that if an injunction is not  
10 released, available on the facts alleged in the  
11 complaint, then an injunction can't be issued by  
12 the Court that's De Beers vs. United 325 U.S. 212.  
13 And we cited cases in our motion to dissolve the  
14 TRO that a party cannot raise a claim for the first  
15 time in a motion. They have to have a pleading on  
16 file that sets forth facts that would entitle them  
17 to injunctive relief and that's missing here. And  
18 that one reasons why there's no showing of  
19 likelihood to success.

20           And the second reason why there is no  
21 showing is because the declarations contemplate  
22 that there will be disputes or there may be  
23 disputes over assessments and what the declaration  
24 said, is that nobody may decline to pay an  
25 assessment based on the existence of a dispute.

1 They have to pay the assessments and then the  
2 dispute gets resolved subsequently. That's what  
3 the declaration say. That's what the NA members  
4 signed up for when they bought the suite interest  
5 and that's what the Virgin Islands cases say.

6 I mentioned the Tower cases, Your  
7 Honor, the 32 Virgin Islands 185. The Court, there  
8 specifically cites and agrees with the whole thing  
9 of the Georgia court and the whole thing of the  
10 Florida court, that say that when the declaration  
11 say you have to pay an assessment, then you have  
12 pay it.

13 In that case, they said well the  
14 association isn't living up to their end of the  
15 bargaining. We shouldn't have to pay the  
16 assessment because they are not maintaining the  
17 property. They are not spending it properly.

18 And the Court says, there is no defense  
19 as a matter of law that relieves you from the  
20 obligation to pay when the declaration says you  
21 have to pay. And the cases that it cites says the  
22 same thing. And the language of the declarations  
23 here which was read to the Court says the same  
24 thing.

25 In the event of the dispute they have

1 to pay and then the dispute gets resolved later and  
2 that involves a fight over money. Do they get a  
3 refund? Do they not get a refund which is not the  
4 subject of injunctive relief that the Court could  
5 not grant. And so there is no showing of certain  
6 and eminent harm, but even beyond that, there is  
7 not even a showing of the likelihood of success on  
8 the merits.

9           Now counsel says that well the Virgin  
10 Islands Condominium Act says, that common charges,  
11 they have to get paid by all the members. Well --  
12 then, why did the suite owners ever pay CU-1  
13 expenses? What she's saying, oh it's a common  
14 charge.

15           It didn't change and the testimony has  
16 been consistent. These are some maintenance  
17 charges, all right. It is CU-1 share of the  
18 maintenance charges which are common charges. If  
19 the provisions of the Virgin Islands Condominium  
20 Act says, no those have to be paid by all of the  
21 members, then why did the suite owners ever paid  
22 them? They paid them for 10 years up until the  
23 attempted de-transfer right after the hurricane  
24 struck.

25           And if counsel is correct the Virgin



1 Islands Condominium Act precludes us from charging  
2 only the suite owners for these maintenance fees,  
3 then why did they ever pay them?

4 The Court has in the record and it is  
5 set Attorney Hodge's hair on fire when it was even  
6 mention this letter from the Marriott outside  
7 lawyer who's an expert in condominium law and real  
8 estate law.

9 ATTORNEY HODGE: I hope we're not  
10 going to have the hearsay introduce now during,  
11 Your Honor.

12 **(ALL SPEAKING AT ONCE.)**

13 THE COURT: Okay, okay. Just one  
14 person at a time.

15 Okay, Attorney Wentzel.

16 ATTORNEY WENTZEL: It ought to  
17 give the Court pause that perhaps Attorney Hodge  
18 when she says this is crystal clear and the Virgin  
19 Islands Condo Act says that these charges have to  
20 be shared among everybody and not just the suite  
21 owners.

22 The outside lawyer for the developer  
23 came to the opposite conclusion and told  
24 Mr. Cutrona and told the rest of the NA Board that  
25 that was not true.

1 THE COURT: Okay. Attorney  
2 Wentzel, Attorney Wentzel, okay.

3 ATTORNEY WENTZEL: And the  
4 developer who drafted the declarations paid the  
5 bill. They had some controversy and that what to  
6 give the Court to pause to conclude. Well, this is  
7 clear that if they don't own the CU-1 anymore, then  
8 they don't own these fees because the developer  
9 paid the fees in the face of the dispute. And the  
10 reason they did that was because that's what the  
11 declarations require.

12 You pay the bill and the dispute is  
13 then handled separately but the harm from entering  
14 an injunction against assessments is not personal  
15 offense. It's interference with the administration  
16 and management of the condominium property.

17 If every time we issue a bill for  
18 assessments, somebody could go to court and get an  
19 injunction, a TRO, a preliminary injunction against  
20 having to pay it, then the condominium could not be  
21 operated.

22 THE COURT: You understand  
23 Attorney Wentzel -- you understand, Attorney  
24 Wentzel, that this assessment appears as if it just  
25 dropped out of the sky in the sense that there was

1 no indication. It appears that there was no  
2 indication in any of the board meetings or the  
3 association meetings rather, not just the board  
4 meetings, but the association meetings as to this  
5 assessment that there wasn't anything about votes  
6 or anything of that matter, but this assessment was  
7 not a result of the discussions that were had. And  
8 I'll give you an example.

9           So for example, let us say that the  
10 GBCOA wanted to build an additional cistern, or  
11 wanted to pave the road, or install street lights,  
12 something along those lines as a special assessment  
13 or separate assessment, separate and apart that  
14 there will be discussions. NA will would be aware  
15 of these discussions maybe, participate in these  
16 discussions. But this an assessment that at the  
17 drop of a dime issued for them to be paid within,  
18 what, 20 days, to be paid within 20 days, and a  
19 compilation of all of these fees that occurred or  
20 were incurred for the last five years, for the last  
21 five years, of a unit that they never had access  
22 to, or they have not had access to for the last  
23 five years. That they've been precluded from  
24 using, for the last five years and automatically,  
25 you said it was delinquent. There was no other

1 discussion. It appears as if there was no  
2 indication. It appears as if that this was going  
3 to occur and occur on such short notice giving them  
4 20 days, what appears to be 20 days and on the  
5 heels of the letter that was sent out by Ms. Herman  
6 just three weeks before threatening lock out and  
7 other penalties in the event they don't pay these  
8 assessments, on top of whatever the other  
9 assessments are that they had to pay as a result of  
10 the October 1st letter from Ms. Herman.

11                   ATTORNEY WENTZEL: I want to  
12 respond to Your Honor concerns. Let me take the  
13 first part which is, you know, being dropped out of  
14 the air. And if they decided that they needed some  
15 capitol improvements, there will be discussions and  
16 a meeting and a vote. Actually, Mr. Doyle  
17 testified that's what occur with these assessments.  
18 There was the board of directors meeting and there  
19 is a signed unanimous written consent --

20                   THE COURT: A board of directors  
21 meeting by GBCOA where NA was involved?

22                   ATTORNEY WENTZEL: It's a board  
23 of directors meeting by GBCOA to make assessments  
24 for the CU-1 assessments. Just like any board  
25 meeting to make any assessments. If they wanted to

1 put in tennis courts, okay, they would not have to  
2 invite everybody, all the members to decide whether  
3 or not they want to build tennis courts and make a  
4 special assessment for that.

5 THE COURT: Well, you're saying  
6 NA was not involved.

7 ATTORNEY WENTZEL: No, no. I'm  
8 not saying that, Your Honor. I'm saying that --  
9 You said it dropped out of the sky with no  
10 discussion and no conversation.

11 THE COURT: No, no, but I wasn't  
12 only speaking about GBCOA's discussions or  
13 extensive discussions. I am speaking about  
14 dropping out of the sky as it relates to the  
15 defendants in this matter.

16 ATTORNEY WENTZEL: We've sued the  
17 defendants for these assessments. They are well  
18 aware of it. That lawsuit has been pending for  
19 well over two years in front of Judge Tejo.

20 THE COURT: That's the matter  
21 with Attorney Jacobs -- Attorney Edwards?

22 ATTORNEY WENTZEL: I'm sorry,  
23 Your Honor?

24 THE COURT: Is that the matter  
25 with Attorney Edwards and Jacobs?

1                   ATTORNEY WENTZEL: Excuse me, it's  
2 Mr. Barry.

3                   THE COURT: Oh, I'm sorry. Okay.

4                   ATTORNEY WENTZEL: NA has a  
5 lawyer in case. And that lawyer is well aware that  
6 we've been seeking these assessments that NA has  
7 not assessed its own members for it.

8                   THE COURT: When was that filed?

9                   ATTORNEY WENTZEL: That's filed  
10 in the Virgin Islands Superior Court in front of  
11 Judge Tejo.

12                   THE COURT: No, no. When? What  
13 year?

14                   ATTORNEY WENTZEL: 2019.

15                   ATTORNEY WILCZYNSKI:  
16 Approximately, one year after this case was filed,  
17 Your Honor.

18                   ATTORNEY WENTZEL: It seeks from  
19 NA, the assessments from 2017, 2018, 2019.

20                   THE COURT: But it was filed a  
21 year and a half after the decision was made, a year  
22 and a half after the deed was turned over.

23                   ATTORNEY WENTZEL: After the deed  
24 was turned over, yes. I don't think it's a year  
25 and a half, but it's more than a year.

1 THE COURT: Right, but there was  
2 a discussion about this without the involvement of  
3 NA.

4 ATTORNEY WENTZEL: You mean, did  
5 we ask NA permission to sue them?

6 THE COURT: No, no.

7 ATTORNEY WENTZEL: The Court said  
8 there was no discussion. It dropped out the air  
9 and that we were seeking these assessments from the  
10 suite owners. And I'm pointing out that that's not  
11 the case. We sued NA for it. They've advised  
12 their owners about the lawsuit. They have counsel  
13 in that case. They've been well aware for a long  
14 time that we've taken the position, that they're  
15 the ones that are responsible for this, and that  
16 their members ultimately are the ones that are  
17 responsible.

18 It's not a surprise, but those -- as I  
19 said before, those issues aren't before the Court.  
20 That's not raised from the pleadings here. What  
21 they should have done is file this request for  
22 injunctive relieve in the other case, but they  
23 elected to do it here because they think that this  
24 court is more favorable to them.

25 So rather than file it in the place

1 where the claim is actually pending, the issue is  
2 actually in dispute raised by the pleadings, the  
3 2017 assessments, the 2018 and 2019. Those all  
4 specifically bequeath the issue of liability to  
5 those in the other case. But they thought that  
6 Your Honor is more favorable, and so whereas  
7 before, they didn't want the cases consolidated in  
8 front of you. Now, they choose to go ahead and  
9 file it in your case instead of the other case and  
10 there is no pleading that asserts the claim here,  
11 but there is the issue raised in that case.

12           So it's not dropped out of the sky.  
13 They have been aware of it for a long time. They  
14 know our position is that --

15           THE COURT: Out of the sky, the  
16 assessment -- the assessment -- The intent to  
17 assess these additional fees was without their  
18 involvement, without their knowing.

19           ATTORNEY WENTZEL: Which  
20 additional fees 2019, 2020 and 2021?

21           ATTORNEY HODGE: The fees of the  
22 Neighborhood Association members directly,  
23 individually.

24           ATTORNEY WENTZEL: I'm trying to  
25 respond to Your Honor's comment.



1 THE COURT: The fees that we're  
2 talking about now, these additional fees. The  
3 additional fees that you're asking for.

4 ATTORNEY WENTZEL: I'm not asking  
5 for fees in this case.

6 THE COURT: I know, but you're  
7 saying it's the other case. It's in another case  
8 before another judge.

9 ATTORNEY WENTZEL: Yes.

10 THE COURT: This is the same  
11 million dollars. It's the same million dollars.  
12 It's just that now you sent out these invoices.

13 ATTORNEY WENTZEL: It's the same  
14 assessment except it doesn't include 2020, 2021  
15 because those years weren't due when we filed that  
16 lawsuit.

17 THE COURT: Yes, I understand.  
18 But what I'm saying is that when the suit was  
19 filed, when the lawsuit was filed, it was filed a  
20 year, at least a year, a year and a half after the  
21 deed was turned over. And it was done after a  
22 meeting of the minds within GBCOA, the board, but  
23 at that meeting, there was no discussion whatsoever  
24 involving NA. Well, NA members -- Mr. Cutrona or  
25 any other member, board of director members was not

1 involved in those discussions in terms of the  
2 assessment.

3                   ATTORNEY WENTZEL: Your Honor,  
4 the NA doesn't make the assessments for the entire  
5 club. It's supposed to make the assessments for  
6 the CU-1 and what the testimony the Court heard  
7 that's unconverted, is that, all the time up until  
8 to 2017, NA assessed against the suit owners and  
9 then NA paid the money to GBCOA. That was done in  
10 the form of book entry, a transfer. It wasn't a  
11 check from NA to GBCOA. But in 2017 after  
12 hurricane, they sent over the deed and at that  
13 point, they stopped paying the assessment and they  
14 stopped collecting it from their members. So  
15 that's what happened.

16                   THE COURT: Okay. So you're  
17 saying they -- okay, all right.

18                   ATTORNEY WENTZEL: And so when  
19 the declaration say that everybody has to pay  
20 assessments even if there is a dispute, that's what  
21 it means, and that's the same thing that the  
22 Condominium Act says, and it's the same thing that  
23 the declaration said. And it's what the members of  
24 the Neighborhood Association signed up for.

25                   When they got their deeds, they

1 understood that they're liable for the CU-1  
2 expenses. It's right there in the declarations.  
3 And as the Court pointed out in the Towers  
4 Condominium case. Those are the things that they  
5 signed up for even if they don't have notice. If  
6 it's in the declarations, they are subject to it.  
7 And they knew it when they bought a suite that the  
8 declaration say the suite owners paid these  
9 expenses and there's two levels.

10           The management company are not -- The  
11 GBCOA the members association, they have the  
12 primary lead for these CU-1 assessments and then  
13 the Neighborhood assessments have the secondary  
14 lead. That's also in the Fifth Amendment to the  
15 main declaration and the Fourth Amendment to the  
16 supplementary declaration. Your Honor can read  
17 those two things and see that it says there.

18           So they signed up for it and so we say  
19 oh, it's not fair. It is fair and what the cases  
20 in the Virgin Islands say, it's fair that you have  
21 to pay what you signed up for. And it's fair that  
22 if you have a dispute about it, you can't withhold  
23 payment to get leverage in the dispute. You have  
24 to make the payment and then the dispute gets  
25 resolved.

1           So the same facts are involved in this  
2 case. We had the authority to make the assessment.  
3 There is no threat or eminent harm of lockout. We  
4 said we weren't going to do that. And you know,  
5 it's been pointed out, well that's not in a  
6 unanimous written consent or anything, but that  
7 puts the cart before the horse. And it's NA's  
8 burden to prove that it will happen if no  
9 injunction is entered. And they have not offered  
10 any evidence that would support an inference of  
11 that being the case.

12           But in saying -- well, that's what they  
13 believed what happened. That's not good enough or  
14 saying that well, they'll probably do it in the  
15 future. That's not good enough. That's just  
16 speculation especially when the record is clear  
17 that no steps were ever taken toward that.

18           My client never asked the management  
19 company to implement lockout related to that.  
20 Ms. Latent Herman said no one had talked to her  
21 about it. She couldn't do it because she doesn't  
22 know how. So it's undisputed, we don't have the  
23 ability to do it even.

24           So there is no certain and eminent harm  
25 that would justify a preliminary injunction and for

1 that reason and especially as I mentioned  
2 recessions or refunds. That's just beyond the  
3 scope of what the Court has the ability to do in  
4 the absence of a pleading that seeks that relief.  
5 And that's why we think the Court should deny the  
6 preliminary injunction.

7 ATTORNEY HODGE: May I be allowed  
8 to respond, Your Honor?

9 THE COURT: Did you finish all  
10 four? So you are just --

11 ATTORNEY WENTZEL: No, I didn't.  
12 Thank you, Your Honor.

13 On the public's interest. First of  
14 all, there is the third element which is will the  
15 harm to the non-moment be greater to the harm of  
16 the movement.

17 Their harm that they've alleged again  
18 is the lockout that they might get locked out, but  
19 as Mr. Cutrona said nobody has threatened him with  
20 that. Not aware of nobody else that's been said  
21 that they are going to get locked out. So that's a  
22 speculative harm that they've put forward. The  
23 harm to GBCOA of an injunction against assessments  
24 that they have the ability to make and that the  
25 declaration say everybody has to pay in the face of

1 a dispute.

2 THE COURT: Isn't deferred  
3 income?

4 ATTORNEY WENTZEL: I'm sorry,  
5 Your Honor?

6 THE COURT: Isn't it deferred  
7 money? In other words, you can still get the money  
8 later on. It's only money, and you can get it  
9 sometime in this future. We have a late fee  
10 interest.

11 ATTORNEY WENTZEL: Well, you have  
12 the right to sue for damages for the unpaid fees;  
13 that's correct. But the harm, I'm not talking  
14 about not having the money. That's not the harm  
15 I'm pointing out now that out weighs their harm.

16 The harm to us, we're the managing  
17 association of the entire club. And there is  
18 twelve hundred and sixty (1260) members of the  
19 club, 288 in the suites and the rest are in the  
20 other. And we're charge with managing entire thing  
21 and these assessments are the CU-1 share of the  
22 common expenses. It's not a -- CU-1 share is not a  
23 common expense. That's where they are conflating  
24 everything. CU-1 share is CU-1 share. And the  
25 Neighborhood Association members paid their own

1 share of the common expenses and they paid CU-1's  
2 share together, collectively. So it is not a --  
3 CU-1 share is not a common expense. It's the  
4 Neighborhood Association's expense.

5           So -- but the harm to the association  
6 from injunctions against assessments, in the face  
7 of the language in the declarations that says  
8 everyone has to pay regardless of the dispute, it's  
9 the interference with the ability to manage the  
10 property. We go without the money. The million  
11 dollars that goes toward maintenance of the entire  
12 club. And not only that, but now it encourages  
13 everybody else.

14           You heard, now it's resulted in request  
15 for refunds. That's way beyond saying we can't  
16 lock people out. And it interferes with the  
17 management of the corporation, and that's the usurp  
18 case that's cited in our briefs. The Virgin  
19 Islands Supreme Court has definitely said that an  
20 injunction that interferes with somebody's right to  
21 manage the property is an irreparable harm.

22           So they have speculative harm that they  
23 might get locked out which they've hobbled together  
24 from a bunch of things, but really at the even of  
25 the day as Ms. Latent Herman said, it's just

1 speculation. That harm next to the interference  
2 with our ability to manage and administer the  
3 property which is the Supreme Court of the Virgin  
4 Islands has said is a real and concrete and  
5 irreparable harm. It's a usurp case.

6           So on third factor, we have the better  
7 case on that one, as well. And then, with regard  
8 to the fourth factor, the public's interest. As  
9 the Towers condo case and the cases that it cites,  
10 the public interest is in having members pay  
11 assessments when they're charged. That's the  
12 fundamental interest that's reflected in the  
13 Condominium Act. And that's why it says that no  
14 one can avoid their responsibility for assessments  
15 by abandoning the property. That's what NA is  
16 trying to here.

17           They are trying to abandon CU-1 and say  
18 okay now we're members don't have to pay. That's  
19 essentially contrary to what the Virgin Islands  
20 Condominium Act says. And if you look at the case  
21 that we cited and the Towers Condominium versus the  
22 Lawrence case, it says that, as well. It's a  
23 public policy of the Virgin Islands reflected in  
24 the Condominium Act that everyone has to pay  
25 assessments, and you can't avoid it by abandoning



1 property. So the public interest factor also  
2 weighs in our favor. It's not really even a close  
3 case. They haven't shown what they have to show to  
4 get a preliminary injunction. And we think the  
5 Court has to deny them.

6 THE COURT: Okay.

7 Primary issue for the public interest  
8 is all assessments have to be paid when upon demand  
9 and it's in the declaration and they just cannot  
10 abandon property.

11 ATTORNEY WENTZEL: Correct.

12 THE COURT: Okay, All right.

13 Thank you.

14 Attorney Hodge.

15 ATTORNEY HODGE: Yes, Your Honor.

16 I'm going to start by saying, I'm not sure whether  
17 we're once again faced with a situation in which  
18 the legal authority is being cited, that doesn't  
19 seem to match the language that's being given.

20 The 3RC & Company case, Judge, that  
21 Attorney Wentzel was talking about where he says we  
22 have to prove the harm with certainty. I just want  
23 to quote to the Court what the Supreme Court  
24 actually said in that case.

25 First of all, the Court said, the Court

1 has a great deal more flexibility in considering  
2 equitable remedies that it does in considering  
3 legal remedies. And that's what an injunction case  
4 is, it's an equitable remedy case. And in quoting  
5 now, the showing must be that irreparable harm is  
6 quote likely without the injunction or that  
7 plaintiff is threatened by some injury for which he  
8 has no adequate legal remedy, or quoting again that  
9 a preliminary injunction is to prevent irreparable  
10 harm where it is likely that the harm would occur  
11 without the injunction.

12           So it doesn't have to be prove to some  
13 sort of Biblical certain. The question is, have we  
14 shown that irreparable harm is likely. And here we  
15 have not to be repetitive, Judge. We have the  
16 exhibits from Great Bay itself about the  
17 condominium declaration section they were citing  
18 for their powers that they said we will impose  
19 these penalties under the declaration if you don't  
20 pay. They didn't say we may. Their Exhibit B  
21 says, *We will impose the penalties under the*  
22 *declarations.* They said it within days after the  
23 memorandum from their management company that said  
24 quote if you do not timely make payment of all  
25 amounts due and owing for common charges fee,

1    lockout will be implemented.

2                    We know that those documents were sent  
3 with a due date of November 22nd, and they were  
4 told that they were already delinquent and that  
5 they had to be paid immediately. So in terms of  
6 the proof that it is likely that an irreparable  
7 harm will happen without an injunction, I think it  
8 is extremely likely, Judge. It's almost a given  
9 that's what the thread is hanging over these  
10 movements.

11                   And while Mr. Wentzel seems to suggest  
12 that we have to collectively prove what was in  
13 their head, we have to, you know, been a fly on the  
14 wall when they had the meeting when he said they  
15 said we won't do this.

16                   In fact, what we have is what was  
17 written, what I just cited to you, the imbedded  
18 connections to the declaration that says these are  
19 the penalties for not paying. The written memo for  
20 the management company that everyone of these NA  
21 members know is in charge of collecting, saying  
22 that if there is any unpaid amount due, there will  
23 be a lockout. And these people who got these bills  
24 saying, *These amounts are due immediately*. That  
25 was the written threat from an organization with

1 the power to impose these penalties.

2           The injury is -- it is undisputable if  
3 the injury is to the right to use their own real  
4 property and that is, by definition irreparable.  
5 So the Supreme Court, I think is the guidance here  
6 would be completely consistent, but giving the NA  
7 members the protection we sought.

8           I also want to respond to what I think  
9 is this continued effort to confuse the difference  
10 between the obligation to pay common charges and  
11 the obligation of the NA members to pay the  
12 assessment for the use of their own units.

13           Everybody in Neighborhood Association  
14 gets a bill for their share of the common charges  
15 and they all pay it. That's not what this is  
16 about. This is a bill for the CU-1 share of the  
17 common expenses. This is according to these  
18 documents that are before you, Judge, CU-1 is a  
19 condominium just like the residences and it gets  
20 its own share of the common senses, and its share  
21 is a specific percentage that the witnesses  
22 testified about. And that percent of the common  
23 expenses that was charged to CU-1 by law under  
24 Title 28 has to go to the owner of that unit.

25           The owner of that unit is one of two

1 entities. It is either Great Bay which we know  
2 have to record title according to the Recorder of  
3 Deeds Office in which case Great Bay is obligated  
4 to pay those common expenses, or if we lose the  
5 case, it's Neighborhood Association. And in that  
6 case, Neighborhood Association is the apartment  
7 owner and responsible to pay it. And if that  
8 happens, at some point down the line, Neighborhood  
9 Association will find the funds to pay. They may  
10 have to assess their members, but that's not now.

11           One thing is a certainty, the  
12 Neighborhood Association members are not the  
13 apartment owners of CU-1. The owner of CU-1 can  
14 only be one of two entities, that's going to be the  
15 Great Bay or Neighborhood Association.

16           I do also want to take exception to the  
17 suggestion that we filed this motion before this  
18 court in this case somehow because we felt we would  
19 have, you know, a better reception.

20           I know nothing about the other case,  
21 Judge. As you know, I'm walled off from the other  
22 case. They moved to consolidate. We opposed that.  
23 I don't know what is going on in that case, but I  
24 do know this, this is the case in which the owner  
25 of CU-1 is going to be determined, and because of

1 that, it is dispositive of this question of who  
2 should pay these common charges.

3           The statute says the owner is  
4 responsible and this is right court to determine  
5 that. And this is an issue, this premature  
6 assessment on Neighborhood Association members by  
7 Great Bay is a power play, is a premature act in  
8 which they've essentially assume that they're going  
9 to win. And that Neighborhood Association will be  
10 responsible for those common charges and they will  
11 be entitled to collect.

12           But if they lose, if the Court  
13 determines that the deed was validly given and they  
14 are the owner, then they don't have the right to  
15 access anybody else because they're the owner.  
16 That's what the statute says.

17           And we didn't dwell on it because I  
18 think we were stopped during the case, but there is  
19 a specific provision in the Fourth Amendment that  
20 is in evidence before you that gave Neighborhood  
21 Association the specific right to deed this  
22 commercial unit to Great Bay without Great Bay's  
23 permission. That's in one of the condominium  
24 declaration.

25           I think it's Exhibit D or F. It's the

1 Fourth Amendment to the supplemental declaration.  
2 And it says -- it says number one, while  
3 Neighborhood Association owns this unit,  
4 Neighborhood Association members will pay the  
5 assessments. And it also says, Neighborhood  
6 Association has the right to convey this commercial  
7 unit to Great Bay without Great Bay's consent.  
8 They have the absolute right to do that conveyance.  
9 So that is part of our defense. We've said it in  
10 the case. And at some point, I'm inclined to think  
11 the case will probably have a summary judgment  
12 motion that will be right for Your Honor to decide  
13 that. But what isn't fair, what is grossly  
14 inappropriate in this case, is that Great Bay has  
15 ignored the fact that they haven't proven their  
16 right to invalidate that deed. They know the title  
17 the record is in them. They know they are the  
18 apartment owner of this unit, right now according  
19 to the records of the Virgin Islands.

20           Their own Articles of Corporation say,  
21 you decide ownership and membership based on the  
22 Recorder of Deeds and yet they want to ignore that  
23 and make the Neighborhood Association members who  
24 they know are not the owners of this unit, never  
25 were, personally pay this massive million dollars

1 assessment. That's not fair. It's not consistent  
2 with the declaration, completely contrary to Virgin  
3 Islands Code. And it is something that the Court  
4 is entitled to protect under the authority of the  
5 Virgin Islands Supreme Court decision in 3RC  
6 because we have shown certainly a likelihood of  
7 success on the merits on this question that the NA  
8 members are not the owners of this apartment. And  
9 they can't possibly be personally liable for this  
10 assessment.

11           Number 2, that they are at grave risk  
12 of irreparable harm if they are not protected with  
13 an injunction until the case is decided on the  
14 merits. That Great Bay will suffer essentially no  
15 harm, if the TRO is extended or preliminary  
16 injunction because they will get their money back  
17 when the time comes if they prevail, unlikely if  
18 that may be. And that the public interest is in  
19 protecting these person who the code says are not  
20 responsible for these assessments.

21           A breach of contract that gives rights  
22 to a claimed debt is exactly the opposite of what  
23 constitutes irreparable harm.

24           Attorney Wentzel is saying, they think  
25 under the declaration, they have the right to



1 collect this money. We say, no. That's a money  
2 claim. They can, you know, they can make their  
3 claims when the time comes. But what they  
4 shouldn't be permitted to do, Judge, is use  
5 essentially the muscle power of an 800 pound  
6 gorilla to make the Neighborhood Association  
7 members pay this assessment that by a statute that  
8 they do not owe because they are not and never have  
9 been the owners of this unit and let the court  
10 determine when the matter is properly right for  
11 final decision who the owner of the apartment is  
12 and therefore who is responsible for these  
13 assessments.

14                   And on the question, Judge, about  
15 whether this was a matter that came out of the sky,  
16 that a 100 percent true, Judge. There is  
17 absolutely no consultation with Neighborhood  
18 Association. I think Mr. Cutrona testified about  
19 the shock that they've experienced when they  
20 suddenly got these bills to the individual members  
21 for the assessment. That was an absolute  
22 unannounced shocking strategy and even Mr. Doyle  
23 seems to have suggest in his testimony that it was  
24 something that he came up with when he was trying  
25 to answer a request for admission in the other

1 case. He doesn't claim that they sat down at a  
2 meeting and told Neighborhood Association that they  
3 were planning to assess their members individually.  
4 And they even secretly went and had a meeting with  
5 the management company to try to get them to do the  
6 bills. Only to find out the management company  
7 wanted nothing to do with it.

8           So in summary, Judge, we need the  
9 protection of the preliminary injunction. The  
10 temporary restraining order was proper. We're not  
11 asking the Court to order anybody to give refunds.  
12 We are asking the Court to extend the existing  
13 temporary restraining order with a preliminary  
14 injunction until the case is decided on the merits.  
15 That's the appropriate thing to do. That's what  
16 the code requires that's consistent with the  
17 declarations and that's consistent with the Virgin  
18 Islands Supreme Court opinion.

19           And I would ask the Court, you know, in  
20 view of the way motion practice is normally  
21 conducted that we have not have Great Bay have the  
22 final word on this which is what I'm sure they're  
23 planning.

24           THE COURT: No, you just had the  
25 final word. Is that what you mean?

1                   ATTORNEY HODGE: Yes. Thank you,  
2 Judge.

3                   THE COURT: No, no, you filed the  
4 motion.

5                   ATTORNEY HODGE: Right.

6                   THE COURT: Okay. All right.  
7 Thank you. So just give me one minute. I'm going  
8 on offspring. One minute.

9                   **(BRIEF RECESS TAKEN.)**

10                   **(HEARING RESUMED.)**

11                   THE COURT: So clearly there are  
12 a number of issues here that the Court has to  
13 address.

14                   I'm going to continue the temporary  
15 retraining order. I am also -- I also believe  
16 however, that the defendants, that NA has provided  
17 sufficient testimony to meet the factors, all four  
18 fact factors actually, in this matter.

19                   The Court therefore is going to grant  
20 that motion for the preliminary injunction. The  
21 injunction is instituted until the case makes the  
22 ultimate decision with respect to the deed in this  
23 matter.

24                   So, the Court rules in favor at this  
25 point with respect to the plaintiffs -- I'm sorry,

1 with respect to the defendants, NA, Neighborhood  
2 Association.

3 I will reduce my order to writing to be  
4 issued sometime in the Spring of 2022, but that's  
5 the order of the Court.

6 ATTORNEY HODGE: Thank you, Your  
7 Honor.

8 ATTORNEY WILCZYNSKI: Your Honor,  
9 can we now have an opportunity to do discovery in  
10 this case to get an expedited trial so we can get  
11 this total matter behind us?

12 ATTORNEY HODGE: I would suggest,  
13 Your Honor, that we have the lawyers confer on  
14 where we are on that. I agree it's an appropriate  
15 time for discussion. There is a motion for  
16 sanctions pending, involving discovery and other  
17 issues that we should talk about. But I would ask  
18 the Court to allow the attorneys to discuss what an  
19 appropriate scheduling order would like and perhaps  
20 report to the Court within whatever period of time  
21 you would set for that.

22 ATTORNEY WILCZYNSKI: I don't  
23 think conferring is necessary at all, Your Honor.  
24 The positions are very clear. There has been  
25 discovery. We've had a complete stoppage of the

1 discovery for at last three years. And if this  
2 thing were to go to trial, or the Court decides our  
3 motion for summary judgment, that should be done in  
4 an expeditious fashion so that the burden of this  
5 preliminary injunction not last any minute longer  
6 than it has to.

7 THE COURT: Okay. So there are  
8 only two primary motions that are pending now, the  
9 motions for sanctions and the motion for summary  
10 judgment.

11 ATTORNEY WILCZYNSKI: I also made  
12 a number of requests for status conferences, for  
13 scheduling orders, for all of that, all of which is  
14 as far as I know has been --

15 THE COURT: -- pending.

16 ATTORNEY WILCZYNSKI: Okay,  
17 pending is fine.

18 THE COURT: Okay.

19 ATTORNEY HODGE: So Your Honor,  
20 in addition to the motion for sanctions and the  
21 motion for summary judgement, the defendant has a  
22 Rule 56 D motion in response to the motion summary  
23 judgment that is relevant to that. But I would  
24 still submit that -- and it's also not true that  
25 we've had no discovery. We've had discovery and

1 then we've had the motion for sanctions that, you  
2 know, interfered with that. That is pending.

3 ATTORNEY WILCZYNSKI: Sorry. I  
4 meant no discovery from the defendant.

5 ATTORNEY HODGE: Well, there was  
6 no timely request for discovery within the terms of  
7 the --

8 ATTORNEY WILCZYNSKI: And there  
9 we go, Your Honor. That's the situation we're in  
10 right now. For three years, we've received no  
11 discovery responses and that's constantly the --  
12 That's why we made the request for scheduling  
13 orders. That's why we made a request for --

14 THE COURT: Okay, so Attorney  
15 Hodge, you're going to have to participate in  
16 discovery. I understand what Attorney Wilczynski  
17 is saying. You're going to have to participate in  
18 discovery. But how long you are going to take to  
19 confer, I mean over this recess to confer, and to  
20 file with the Court a proposed scheduling order?

21 ATTORNEY WILCZYNSKI: Next week,  
22 Your Honor.

23 THE COURT: Okay. So it will be  
24 signed off on as soon -- as soon as it's submitted,  
25 okay. There will be no delay with respect to that.

1 And then what I'll do is address the motion for  
2 summary judgment quickly, first in association with  
3 this order regarding the ruling of the preliminary  
4 injunction.

5 ATTORNEY HODGE: We'll need an  
6 opportunity to respond to the motion for summary  
7 judgment on the merits, Judge, because our 56 D  
8 motion had to do with a discovery we needed. So,  
9 I'd ask the Court to allow us time to do that.

10 In fact, we should put that in the  
11 scheduling order, a timeframe for that.

12 THE COURT: Okay, go ahead and do  
13 that.

14 ATTORNEY WILCZYNSKI: I would add  
15 anything she wants to the scheduling order, Your  
16 Honor. I'm more than happy to do it. We just  
17 didn't get discovery done, including the  
18 depositions of Mr. Cutrona.

19 THE COURT: Okay, okay. All  
20 right.

21 So insert all of the dates including --  
22 well insert all of the potential dates in the  
23 proposed scheduling order, and we will take it from  
24 there. I will sign off on that as soon as it's  
25 submitted.

1                   ATTORNEY WILCZYNSKI: That's  
2 fine, Your Honor. And the question of an  
3 interlocutory appeal now that a preliminary  
4 injunction has been issued, I mean, you're going to  
5 do an opinion. But if we have to wait until the  
6 spring to do an appeal --

7                   THE COURT: We only have two more  
8 weeks. And I'm going to jury trial January 4th.

9                   ATTORNEY WILCZYNSKI: I  
10 understand, Your Honor. I made it a little lighter  
11 for you. At least I got rid of one of those trials  
12 for you.

13                  THE COURT: That's only like one  
14 tenth lighter.

15                  ATTORNEY WILCZYNSKI: Well, it's  
16 better than nothing.

17                  THE COURT: That's true. I  
18 appreciate that.

19                  ATTORNEY WENTZEL: There is one  
20 other thing as well, Your Honor, in terms of the  
21 security and the bond.

22                  Now that the TRO is been -- has been  
23 granted or extended in the form of a preliminary  
24 injunction, Rule 65 C requires the posting of  
25 adequate security.



1                   ATTORNEY HODGE: The issue of a  
2 bond was before Your Honor was when we met earlier  
3 Your Honor. The very same rules about a bond apply  
4 now as they did then, and we argued about why there  
5 was not a need for a bond. There was no reason to  
6 think that there will be any damage to the  
7 plaintiff because their position is covered by  
8 their claim for interest and late fees.

9                   The cost of complying with the order  
10 essentially nil, and Your Honor already ruled on  
11 that. So I don't think that's a new issue, but if  
12 it's going to be a new issue, I would ask the Court  
13 not to decide it on the basis of this without an  
14 opportunity to be heard further because I think the  
15 Court's decision on a bond in the last order should  
16 apply equally here.

17                   ATTORNEY WENTZEL: The difference  
18 is that 65-C doesn't expressly relate to a TRO and  
19 so the argument was made at that the Court doesn't  
20 have to grant a bond for a TRO. But it expressly  
21 requires security for a preliminary injunction  
22 and --

23                   THE COURT: Well, it's just  
24 seven days on each side to submit a written brief,  
25 seven days.

1                   ATTORNEY WILCZYNSKI: Yes, Your  
2 Honor, thank you.

3                   THE COURT: All right.

4                   ATTORNEY HODGE: Is the same  
5 deadline for both sides, Judge, one seven-day  
6 period, not a reply to the other?

7                   THE COURT: No replies.

8                   ATTORNEY HODGE: Very well.

9                   THE COURT: Okay. Okay, how many  
10 days do you need to get the proposed scheduling  
11 order in?

12                   ATTORNEY WILCZYNSKI: If today is  
13 Monday, we can have it by next Wednesday, Your  
14 Honor?

15                   How does that sound, Maria?

16                   ATTORNEY HODGE: Well, you said  
17 next week and I can live with that, but I would ask  
18 for the end of the week instead of Wednesday.

19                   ATTORNEY WILCZYNSKI: The Court  
20 is closed on Friday.

21                   THE COURT: What date is next  
22 Friday?

23                   ATTORNEY WILCZYNSKI: That's  
24 December the 24th, I believe.

25                   THE COURT: Okay, so that's a

1 half day.

2 ATTORNEY HODGE: Can we go till  
3 the next week, Judge? Not only is this right into  
4 the holidays, but I have been -- I feel I have been  
5 devoting 100 percent of my time to this and I have  
6 a lot of deadlines.

7 Can we possibly ask counsel to agree  
8 and the court to agree on a date the following  
9 week, the week of the 27th?

10 ATTORNEY WILCZYNSKI: Your Honor,  
11 I'm so sorry. I'm going not going agree to  
12 anything more than 10 days. It does not take a  
13 long time do one of these.

14 THE COURT: No, no, no. Let's  
15 move this along. This Friday.

16 ATTORNEY HODGE: Oh, I can't do  
17 it this Friday. Do you mean the day after  
18 tomorrow, Judge, this Friday or next week?

19 THE COURT: Isn't today Monday?

20 ATTORNEY WILCZYNSKI: How about  
21 Wednesday? I'll give you the two extra days.

22 ATTORNEY HODGE: Wednesday of  
23 what week?

24 THE COURT: Next week Wednesday.

25 ATTORNEY HODGE: How is that two

1 extra days? That's ten days. Anyway, whatever you  
2 say, I'll do.

3 ATTORNEY WILCZYNSKI: Thank you.

4 THE COURT: Three days after, the  
5 briefs are due. So is it too difficult? I'm  
6 trying to be fair for everyone.

7 ATTORNEY HODGE: It is feeling  
8 very crowded to me, Your Honor. I'm out of breath.

9 THE COURT: Okay. All right.  
10 Let us start again.

11 Is seven days sufficient time for the  
12 written briefs? So that's next week Monday.

13 ATTORNEY HODGE: That's the brief  
14 solely on the issue of the bond, Your Honor?

15 THE COURT: Yes, yes.

16 ATTORNEY WILCZYNSKI: David?

17 ATTORNEY WENTZEL: Mark, that's  
18 going to be in your ballpark.

19 THE COURT: Okay.

20 ATTORNEY WILCZYNSKI: Seven days  
21 is fine.

22 THE COURT: Sorry, seven days is  
23 fine? Next week Monday on the briefs? Okay.

24 ATTORNEY WILCZYNSKI: Okay 5:00  
25 PM next Monday will be adequate.

1                   ATTORNEY HODGE: Okay. Can we  
2 take the 5:00 PM on Monday and can we please move  
3 the date for the scheduling order if we're going to  
4 do that?

5                   ATTORNEY WILCZYNSKI: How about  
6 the Thursday?

7                   THE COURT: Thursday the 23rd.  
8 Is that the 23rd?

9                   ATTORNEY WILCZYNSKI: Yes.

10                  THE COURT: Okay.

11                  ATTORNEY HODGE: So Attorney  
12 Wilczynski, are you sending me a proposed deadline  
13 scheduling order?

14                  THE COURT: Is January too late  
15 for everyone?

16                  ATTORNEY WILCZYNSKI: It's too  
17 late.

18                  THE COURT: I don't want to  
19 pressure anyone. And the Court needs to go on this  
20 recess so the Court can have enough time to deal  
21 with a lot of other matters on paper.

22                  So, is January too late?

23                  ATTORNEY WILCZYNSKI: For me, it  
24 is, Your Honor. I'd defer to you judgement, Your  
25 Honor.

1 THE COURT: Okay.

2 ATTORNEY WILCZYNSKI: If that's  
3 what you want, I will do what you say, but on  
4 behalf of my client, I'd like us to get this done  
5 as soon as possible, Your Honor.

6 THE COURT: Okay.

7 Attorney Hodge?

8 ATTORNEY HODGE: I don't have any  
9 objection to sign it, but I would say that I would  
10 certainly prefer the January date but I'm not only  
11 feeling overwhelmed with deadlines, but we also  
12 have some holidays. My office takes off some of  
13 these holidays and my family, as well. So if we  
14 can put this into January, that will be personally  
15 appreciated.

16 ATTORNEY WILCZYNSKI: You had  
17 originally indicated, you wouldn't mind between  
18 Christmas and New Years, can we move it till then?  
19 I mean that just our --

20 THE COURT: Friday, January 7th.

21 ATTORNEY WILCZYNSKI: All right,  
22 Your Honor.

23 THE COURT: Okay.

24 THE CLERK: Judge, January 7th is  
25 for the bond hearing or the pre --

1 THE COURT: No, it's not a  
2 hearing. It's --

3 THE CLERK: I mean -- not the  
4 hearing. I understand.

5 ATTORNEY HODGE: Isn't it the  
6 scheduling order to submit the scheduling order?

7 THE COURT: Yes, correct.

8 THE CLERK: January 7th is the  
9 scheduling order, okay.

10 ATTORNEY WENTZEL: Just so I'm  
11 clear, Your Honor, because I have two different  
12 notes.

13 Your Honor, you said you're going to  
14 issue your order on the preliminary injunction in  
15 the Spring. And I think you mentioned January.  
16 Unless, I got that wrong?

17 THE COURT: No, no, no. What I  
18 was saying was that January might -- my schedule is  
19 extremely busy in January. Starting January 4, my  
20 schedule is very busy, but the preliminary  
21 injunction order will come out in the Spring.

22 I said January 7th with respect to not  
23 having to file the proposed scheduling order now to  
24 give the parties a break. And so that the Court --  
25 I'm sorry, so that the parties can meet, confer,

1 file the proposed scheduling order and I can get  
2 that out to the parties.

3           Would you also like the briefs to be  
4 written at that time also or work fine with the  
5 seven days on the brief which will be next week  
6 Monday.

7           ATTORNEY WILCZYNSKI: Your Honor,  
8 the request on the bond it's -- We can wait until  
9 the seventh, as well, Your Honor.

10           THE COURT: Okay. So everything  
11 which will be the written briefs, no replies and  
12 the proposed scheduling order both to be filed by  
13 January 7th.

14           ATTORNEY HODGE: Thank you all,  
15 Judge, I might have to cancel with that.

16           ATTORNEY WENTZEL: And the Court  
17 has not issued a target for the order, correct?  
18 The bond, is that going to be covered in Your  
19 Honor's order in the Spring or --

20           THE COURT: No, I will make a  
21 decision about that before the order comes out. I  
22 will make a decision about that promptly as soon as  
23 you file the briefs on January 7th.

24           ATTORNEY WILCZYNSKI: Well then,  
25 Your Honor, can we -- can we use the Friday of the



1 week before then because that's kind of an  
2 important date for us.

3 THE COURT: I'm sorry. So Friday  
4 of what? You mean December 31?

5 ATTORNEY WILCZYNSKI: Yes. The  
6 filing of the briefs then and then the Court will  
7 be able to review that over that lovely weekend  
8 you'll have before your ten trials.

9 ATTORNEY HODGE: Is that  
10 December 31st you're talking about is the Friday  
11 before the day when most of us think it's New Years  
12 Eve?

13 ATTORNEY WILCZYNSKI: Well, we  
14 started off with seven and ten and now we are  
15 basically going on at 21 and 24.

16 ATTORNEY HODGE: Well, if  
17 everything is on the 7th, at least we can all have  
18 a holiday. We can have a breath, and we can get it  
19 to the Judge at a date that we can manage and she  
20 can manage.

21 THE COURT: Yes, the Friday is  
22 December 31st. That's a half day for the Court.

23 ATTORNEY WILCZYNSKI: That's our  
24 deadline; it wouldn't be your deadline, Your Honor.

25 THE COURT: Okay, but I was

1 saying if you're going to file it on Friday, it  
2 needs to be filed before 12 o'clock. That's what I  
3 was saying. I'm getting tired. I'm sorry.

4 ATTORNEY WENTZEL: I beg the  
5 Court's forgiveness. But is it your ruling then  
6 the TRO order that's currently entered that that's  
7 going to be extended until your order on the  
8 preliminary injunction?

9 THE COURT: Yes. The TRO stays  
10 in place until the ruling, the written ruling of  
11 the preliminary injunction.

12 ATTORNEY WENTZEL: Thank you,  
13 Your Honor.

14 THE COURT: Any concerns?

15 ATTORNEY HODGE: I will accept  
16 the morning of December 31st for the brief on the  
17 bonds if everybody else -- I'm gathering that  
18 Attorney Wilczynski prefers that and if Your Honor  
19 is okay with the idea of getting the briefs that  
20 morning, I will work with that.

21 THE COURT: Okay. Okay.

22 So the scheduling order is still on  
23 January 7th.

24 ATTORNEY WILCZYNSKI: Yes, Your  
25 Honor.

1 THE COURT: Okay. All right.  
2 So, on December 31st before noon for the written  
3 briefs and the scheduling order, proposed order  
4 January 7th.

5 ATTORNEY WILCZYNSKI: Very good.

6 THE COURT: And that's it.

7 ATTORNEY WILCZYNSKI: And have a  
8 nice recess and a Merry Christmas.

9 THE COURT: Thank you. Thank you  
10 very much.

11 ATTORNEY HODGE: Thank you, Your  
12 Honor.

13 THE COURT: Yes, you're welcome.  
14 Everyone is welcome.

15 THE WITNESS: Thank you, Your  
16 Honor.

17 THE COURT: You're welcome.  
18 You're welcome. Happy Holidays to everyone and  
19 Merry Christmas. Thank you.

20 ATTORNEY HODGE: Thank you,  
21 Judge.

22 THE COURT: Okay, all right. Bye  
23 bye.

24 **(HEARING ADJOURNED AT 4:57 P.M.)**

25



**FILED**

December 16, 2021 10:43 AM  
ST-2018-CV-00768  
TAMARA CHARLES  
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS**  
District of St. Thomas/St. John

**GREAT BAY CONDOMINIUM OWNERS  
ASSOCIATION, INC.,**  
**Plaintiff**

Case Number: **ST-2018-CV-00768**  
Action: **Declaratory Judgment**

v.

**THE NEIGHBORHOOD ASSOCIATION,  
INC.,**  
**Defendant.**

**NOTICE of ENTRY**  
**of**  
**ORDER EXTENDING TEMPORARY RESTRAINING**  
**ORDER**

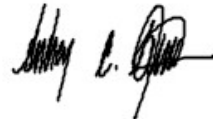
To: W. Mark Wilczynski, Esquire	_____	Maria T. Hodge, Esquire	_____
David F. Wentzel, Esquire	_____		_____
_____	_____		_____
_____	_____		_____
_____	_____		_____
_____	_____		_____
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_____	_____		_____

Please take notice that on December 16, 2021  
a(n) ORDER EXTENDING TEMPORARY RESTRAINING ORDER  
dated December 15, 2021 was entered  
by the Clerk in the above-titled matter.

Dated: December 16, 2021

\_\_\_\_\_  
Tamara Charles  
Clerk of the Court

By:



\_\_\_\_\_  
Audrey C. Brin  
Court Clerk II

**FILED**

December 15, 2021 10:41 AM  
ST-2018-CV-00768  
TAMARA CHARLES  
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

\*\*\*\*\*

GREAT BAY CONDOMINIUM OWNERS )	
ASSOCIATION, INC., )	
Plaintiff, )	CASE NO. ST-18-CV-768
v. )	
THE NEIGHBORHOOD ASSOCIATION, INC., )	ACTION FOR DECLARATORY
Defendant. )	JUDGMENT, TO CANCEL DEED
_____ )	AND TO QUIET TITLE

**ORDER EXTENDING TEMPORARY RESTRAINING ORDER**

**THIS MATTER** having come on for a hearing on November 19, December 8, 9 and 13, 2021, upon the motion of the Defendant, The Neighborhood Association, Inc. (“NA”), for a preliminary injunction (“the Motion”) against Plaintiff Great Bay Condominium Owners Association, Inc. (“Great Bay”), under the authority of V.I.R.Civ. P. 65(b), the Court having previously entered a temporary restraining order on November 12, 2021, the Court having heard the arguments of the parties, and having received evidence on the matter, and now having concluded that the preliminary injunction is appropriate and should be granted, and the Court being duly satisfied in the premises, it is hereby

**ORDERED** that the Temporary Restraining Order previously entered, shall be and is hereby **EXTENDED** for good cause until the issuance of an Order of Preliminary Injunction; and it is further

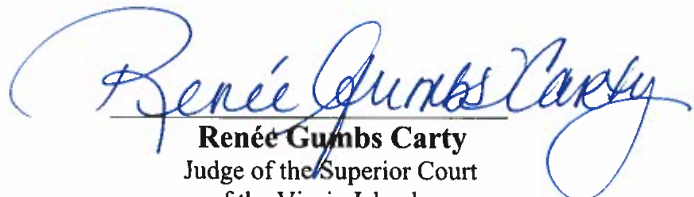
Great Bay Condominium Owners Association Inc.  
v. The Neighborhood Association, Inc.  
Case No. ST-18-CV-768  
Order Extending Temporary Restraining Order  
Page 2

**ORDERED** that having heard the preliminary arguments on the issue of security, the parties shall both file their briefs not later than **Friday, December 31, 2021, at 12:00 p.m.**; and it is further


**ORDERED** that the parties shall meet and confer and submit a proposed scheduling order by **Friday, January 7, 2022**; and it is further

**ORDERED** that a copy of this Order shall be directed to W. Mark Wilczynski, Esquire, David Wentzel, Esquire, and Maria Tankenson Hodge, Esquire.

Dated: December 15, 2021

  
**Renée Gumbs Carty**  
Judge of the Superior Court  
of the Virgin Islands

**ATTEST:**  
Tamara Charles  
Clerk of the Court

By:   
for Latoya Camacho  
Court Clerk Supervisor 12/15/2021

A.001471

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.	)	
	)	CIVIL NO. ST-18-CV-768
PLAINTIFF,	)	
V.	)	ACTION FOR DECLARATORY JUDGMENT, TO CANCEL DEED AND TO QUIET TITLE
THE NEIGHBORHOOD ASSOCIATION, INC.	)	
	)	
DEFENDANT.	)	

**MEMORANDUM IN RESPONSE TO PLAINTIFF’S REQUEST FOR BOND AS  
CONDITION OF COURT’S GRANT OF EXTENDED TEMPORARY  
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

**INTRODUCTION**

The Neighborhood Association, Inc. (“NA”) has demonstrated to the court that the Plaintiff, Great Bay Condominium Owners Association, Inc. (“Great Bay) improperly and unlawfully issued invoices to NA’s members for five years of retroactive common charges for a commercial condominium unit, CU-1, while record title to the unit was and is actually in Great Bay, itself. This was done, the evidence showed, when doing so was contrary to Virgin Islands law. This improper and unlawful assessment was associated with threats of punitive measures which would impair the NA members’ rights to use and benefit of their own residential condominium interests.

A temporary restraining order was issued by the court on November 12, 2021, at 5:20 p.m., upon motion and affidavit filed by NA, establishing the four factors that warrant such issuance. The Court thereupon issued the attached TRO, attached here as Exhibit A.

The matter came on for hearing before the Court in a series of evidentiary proceedings, commencing on November 19, 2021, at 10:00 a.m., On that date, the Court determined that the



Great Bay motion to dissolve the TRO would be denied, and the order was extended for the duration of the court hearings, which continued on December 8, December 9, and concluded on December 13. These hearings were scheduled in part to accommodate the travel of one of Great Bay's officers and witnesses, who was not available until December 13, between 2 and 4 pm.

After testimony from the witnesses for both parties, and hearing extensive argument on the NA motion for a preliminary injunction, the court announced a decision on December 13, that it found that NA had satisfied the four factors required to grant a preliminary injunction, and that it would extend the TRO until the formal opinion granting the preliminary injunction was issued. A written order confirming that ruling was issued on December 15, 2021. See Exhibit B. The finding by the court that NA had satisfied the four factors required to warrant a preliminary injunction, confirmed that NA has shown (1) a likelihood of success on the merits; (2) that it will suffer irreparable harm if the injunction is denied; (3) that granting preliminary relief will not result in even greater harm to the nonmoving party; and (4) that the public interest favors such relief.” *Hansen v. Virgin Islands Water & Power Auth.*, No. SX-11-CV-356, 2011 WL 3841584, at \*1 (V.I. Super. Aug. 12, 2011). V.I.R.Civ.P. 65.

During the several days of hearings, the court was asked by Great Bay to require a bond of NA for the continuation of the TRO, and the court heard the parties on that request during the proceedings on November 19. Considering those arguments, the court determined that a bond should not be required. (See Order of November 19, 2021, attached s Exhibit C). The substance of the arguments at that time from Great Bay were that they would face damages in the amount of the common charges they sought to collect from NA members, amounting to some \$900,000 or more, because of the TRO. However, NA pointed out that Great Bay faced no such loss, even if it were somehow later determined that the TRO was improvidently granted, because their invoices

to NA members already included interest and late fees, and billed for the entire amount they claimed was due. (Def. Ex. A) Those same invoices could obviously be reissued if the TRO or preliminary injunction were later vacated, and the same members Great Bay sought to collect from in its October, 2021, invoices, would simply be billed to NA members again, with whatever additional interest or late fees Great Bay then claimed were due. Further, it was shown that Great Bay was able to notify the NA members the invoices were rescinded with a mass email distribution to them, at a cost of nothing. (Testimony of Cutrona, Chung, Def. Ex. O). It follows that an email to reinstate invoices, if ever found justified, could be similarly sent at no cost to Great Bay. Thus, there was no exposure to damages from the TRO, and no cost of compliance with the TRO, so that the court properly concluded no bond was required to protect Great Bay. Thus, the court held in its November 19 order that “having heard the parties on the issue of security, no bond will be required of NA in connection herewith, as the Court concludes that the Plaintiff will not incur any material costs or damages as a result of the TRO, for reasons discussed at the hearing, if it is later determined to have been wrongfully enjoined.” (See Ex. C).

At the final day of hearings on December 13, when the court announced its decision to extend the TRO and grant a preliminary injunction, Great Bay once again made a request for a bond, with no new evidence or support, claiming that this was required by Rule 65 now that a preliminary injunction was to be issued. That position is not supported by the law, as set forth below, and no bond should be required to extend the TRO or enter a preliminary injunction.

**I. RULE 65(C) GOVERNING SECURITY FOR A TRO OR A PRELIMINARY INJUNCTION DOES NOT REQUIRE A BOND WHERE THE EVIDENCE DEMONSTRATES NO RISK OF DAMAGES AND NO COST OF COMPLIANCE.**

Contrary to the position taken by Great Bay at the hearing on December 13 regarding a bond requirement, VI Rule 65 makes no distinction between security for a preliminary injunction

or a temporary restraining order. Rule 65(c) states “[t]he court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any part found to have been wrongfully enjoined or restrained. The Government of the Virgin Islands, its officers and its agencies are not required to give security.” This language is identical to that in Fed.R.Civ. P. 65, excepting only the substitution of the Government of the Virgin Islands for the United States.

This rule leaves to the court the determination of the amount the court considers proper to pay any costs or damages sustained by a wrongfully enjoined party. Courts have long held that a trial court issuing an injunction or a temporary restraining order has the discretion to dispense with the security requirement under Rule 65(c) under certain circumstances. See, e.g., *Galper v. United States Shoe Corp.*, 815 F.Supp. 1037, 1045 (E.D. Mich. 1993) (trial judge is vested with discretion to determine whether bond is required as security for injunctive relief); *Coquina Oil Corp. v. Transwestern Pipeline Co.*, 825 F.2d 1461, 1462 (10<sup>th</sup> Cir. 1987)(district court has discretion to determine if injunction bond is necessary). The Second Circuit, for example, has held that a district court has discretion to decline to require a bond when the parties’ continuing relationship will afford the plaintiff an opportunity to recoup its losses if the injunctive relief is wrongly entered. *U.S. v. Bedford Assn.*, 618 F.2d 904, 916-917 (2<sup>nd</sup> Cir. 11980), cert denied, 456 U.S. 914 (1982) (no abuse of discretion by district court in denying bond when parties had ongoing relationship that will afford enjoined party opportunity to recoup losses if injunction was wrongfully issued.)

Particularly appropriate here are the cases holding that security may be waived when granting injunctive relief where it carries no risk of monetary loss to the party enjoined or restrained. *Doctor’s Associates, Inc. v. Distajo*, 107 F.3d 126, 136 (2<sup>nd</sup> Cir. 1997) (district court did not abuse discretion by issuing injunctions without requiring bonds since there had been no

proof of likelihood of harm from injunctions); *Americans United for Separation of Church and State v. City of Grand Rapids*, 784 F.Supp. 403, 412 (W.D.Mich. 1990) (no error in waiving security where there was no possibility that material damages would follow from grant of injunction preventing erection of Menorah on public plaza); *Coquina Oil Corp.*, *supra*, at 1462 (10<sup>th</sup> Cir. 1987) (district court has discretion to determine if injunction bond is necessary.)

Against that legal authority, Great Bay offered no credible evidence that it would sustain any material damages as a result of this TRO or the preliminary injunction to follow. Its ability to simply reissue the rescinded, invalid invoices, to the same members, by email as in the case of the original invoices, adding all the interest and late fees that might accrue, just as they did with the original retroactive invoices, remains undisturbed, if the TRO or the preliminary injunction were somehow later dissolved. Likewise, the cost to Great Bay of compliance with the TRO, according to the evidence, was nothing, as it was done by a simple, cost-free, email to the NA members, on a blast distribution of the TRO.

## II. THE VIRGIN ISLANDS SUPREME COURT IN YUSUF V. HAMED DID NOT IMPOSE A RULE REQUIRING A BOND FOR ALL RESTRAINING ORDER

One case from the Virgin Islands Supreme Court held a particular bond was insufficient, where it relied upon funds held in escrow by another court, amounting to some \$43 million, representing disputed revenues from a family business. *Yusuf v. Hamed*, 59 V.I. 841 (V.I. 2013). In *Yusuf*, the Supreme Court upheld the Superior Court decision to grant a preliminary injunction, invoking the four factor test cited above, and citing *Petrus v. Queen Charlotte Hotel Corp.*, 56 V.I. 548, 554 (V.I. 2012) for that original holding. In *Yusuf*, the Court considered the bond fixed by the Superior Court in a case in which one family member sought a preliminary injunction against others in his family, to require the defendants to maintain joint management of the three Plaza Extra Supermarkets in St. Croix. The amount at risk in that matter was in the tens of millions of

dollars, and some \$43 million was being held in the District Court's escrow pending the outcome of a criminal case. The Superior court required a bond of just \$25,000 and required the \$43 million in funds on deposit in the District Court to serve as "additional security to pay any costs and damages incurred if found to have bene wrongfully enjoined". The VI Supreme Court held that was an abuse of discretion because the millions of dollars in the District Court registry were "outside of the parties control," and also outside the control of the Superior Court.

The Court in *Yusuf* said the "purpose of this security is to guarantee that the enjoined party will be compensated for the expenses of complying with an erroneously issued injunction, as well as placing the moving party on notice of the maximum amount of compensation it could be forced to pay." Here, the evidence clearly establishes that Great Bay faces no expenses whatever in complying the court's order, as its blast email notices to NA members to advise them of the TRO were clearly cost-free. Likewise, the evidence makes clear Great Bay faces no damages or loss even if the injunction is later vacated, as it will then simply reissue its disputed invoices to NA members, with any additional interest added, just as it did with the rescinded invoices. Put simply, this is a case where there is no cost to comply with the court's interlocutory injunction, and no risk of damage from the temporary restraint of the invalid invoices.

In summary, *Yusuf's* decision that the bond in that case represented an abuse of discretion has no application to this dispute, because there is no such risk of massive loss here, and there is no reliance by this court on funds held in another court's registry.

### **CONCLUSION**

The Court has properly concluded that NA has demonstrated that (1) there is a reasonable probability of eventual success in this litigation; (2) if injunctive relief is denied, NA and its members will suffer irreparable harm; (3) the harm to Great Bay is not outweighed by the harm to

NA and its members; and (4) the public interest favors injunctive relief in this case. Thus, the TRO was properly entered and extended. The Preliminary Injunction the court has indicated will be issued is likewise entirely proper, under the applicable legal guidelines. No security is required in this case, as the Plaintiff has incurred and will incur no costs in complying with the Order, and it has shown no evidence of any potential damages from entry of the TRO or the preliminary injunction, even if it were later determined the same were improvidently granted. Plainly, nothing in the record warrants a change in the Court's ruling that no bond is required here.

Therefore, this court should exercise its discretion, as it did in its order of November 19, and hold that no security is required in the present circumstances.

DATED: December 31, 2021

RESPECTFULLY SUBMITTED,

/s/ Maria T. Hodge  
HODGE & HODGE  
By: Maria Tankenson Hodge (VI Bar #170)  
1340 Taarneberg  
St. Thomas, V.I. 00802  
(340) 774-6845  
maria@hodgelawvi.com

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 31st day of December, 2021, a true and correct copy of the foregoing was served via the Court's electronic filing system, upon:

W. Mark Wilczynski, Esq.  
Law Offices of W. Mark Wilczynski, P.C.  
Palm Passage, Suite C20-22  
P.O. Box 1150  
St. Thomas, VI 00804-1150  
Email: [mwilczynski@usvilaw.com](mailto:mwilczynski@usvilaw.com)  
*Counsel for Plaintiff*

David F. Wentzel, Esq.  
Wentzel Law Offices  
77 W. Washington St. Suite 2100  
Chicago, Ill. 60602  
Email: [dwentzel@wentzellaw.com](mailto:dwentzel@wentzellaw.com)  
*Counsel for Plaintiff*

/s/ Maria T. Hodge \_\_\_\_\_

**FILED**

November 12, 2021 02:00 PM

ST-2018-CV-00768

TAMARA CHARLES

CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.	)	
	)	CIVIL NO. ST-18-CV-768
PLAINTIFF,	)	
V.	)	ACTION FOR DECLARATORY JUDGMENT, TO CANCEL DEED AND TO QUIET TITLE
THE NEIGHBORHOOD ASSOCIATION, INC.	)	
	)	
DEFENDANT.	)	

**ORDER FOR TEMPORARY RESTRAINING ORDER**

UPON MOTION of the Defendant, The Neighborhood Association, Inc. ("NA"), for a temporary restraining order against Plaintiff, Great Bay Condominium Owners Association, Inc. ("Great Bay"), under the authority of V.I.R.Civ.P. 65(b), and the Court having reviewed the motion, supporting memorandum of law, and affirmation in support thereof, hereby concludes that NA and its members have clearly shown that immediate and irreparable injury, loss or damage, will result to the movant before Great Bay can be heard in opposition, such injury consisting of the imposition upon the individual condominiums of the NA members, of a lien for common charges for that certain commercial unit described as "CU-1" or the "Grand Palazzo Lounge", with the associated threat that NA's members will be subjected to "lockout" from the use of their condominium residences and amenities to which they are entitled as the owners of such residences and as members of the Ritz-Carlton Destination Club as a rightful amenity of such ownership, if they do not pay the disputed assessments, which have been issued against their private residential interests by Great Bay while its action to determine ownership of CU-1 is pending and undecided, so that ownership of that unit, and responsibility for any valid common charges or dues therefore,



which would be the responsibility of the Owner of CU-1, has not yet been determined by this Court, and so that NA's members would effectively be coerced or compelled by this disputed assessment to make payments they do not owe, upon threat of loss of use of their residences while this case is pending, and the Court therefore concluding that Great Bay has initiated an unlawful and improper campaign to assess the individual members of NA, with years of retroactive dues assessments, purporting to rely upon a dubious interpretation of the governing condominium documents that require owners of residential units to pay such charges for this separate commercial unit, even as Great Bay has present before this Court the undecided claims in its suit seeking a declaration that it is not the owner of the commercial unit in question, despite having title of record thereto in the records of the Office of the Recorder of Deeds. In pursuit of its evasion of the authority of the Court to decide that claim, Great Bay has suddenly issued invoices to the individual members of NA who own separate interests in condominiums at the property, with a demand that they pay these disputed and apparently unlawful claims by November 22, 2021, or face eviction or lockout from their residences. This imminent threat of self-help by the Plaintiff constitutes a sufficient showing of irreparable harm to NA and its members, warranting issuance of this temporary restraining order, to preserve the status quo and protect NA and its owners from the threatened discriminatory and presumptive illegal actions now being taken. These threats are currently outstanding, and despite demand, have not been withdrawn, as evidenced by the affidavit of NA.

Accordingly, the Court finds that Defendant has demonstrated that (1) there is a reasonable probability of eventual success in this litigation and on this present threatened illegal conduct; (2) if injunctive relief is denied, NA and its members will suffer irreparable harm; (3) the harm to Great Bay is not outweighed by the harm to NA and its members if the requested relief is granted;

and (4) the public interest favors injunctive relief in this case.

NOW, THEREFORE, IT IS HEREBY ORDERED that Great Bay, and all persons acting in concert with Great Bay, be and are hereby ordered to rescind the invoices to NA members for dues and common charges for CU-1, and from taking any action to impose a lien related thereto, or from taking any steps to Lock Out or otherwise impair, restrain or obstruct in any way the use by NA's members or their residences, condominiums, or the common areas at the Ritz-Carlton, or other membership rights and amenities, for a period of fourteen (14) days from the date of this order, commencing on the date and hour set forth below, and it is further

ORDERED that this matter shall come on for hearing upon NA's motion for a preliminary injunction to continue the order here entered on November 19, 2021, at 10:00 AM, in the Superior Court of the Virgin Islands, to be conducted by Zoom with an invitation to issue by the Clerk of the Court to the parties and their witnesses.

SO ORDERED this 18<sup>th</sup> day of November, 2021, at 5:00 o'clock pm.

  
HONORABLE RENE GUMBS CARTY  
JUDGE OF THE SUPERIOR COURT

ATTEST:

\_\_\_\_\_  
Clerk of the Court

**FILED**

December 16, 2021 10:43 AM  
ST-2018-CV-00768  
TAMARA CHARLES  
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS**  
District of St. Thomas/St. John

**GREAT BAY CONDOMINIUM OWNERS  
ASSOCIATION, INC.,**  
**Plaintiff**

Case Number: **ST-2018-CV-00768**  
Action: **Declaratory Judgment**

v.

**THE NEIGHBORHOOD ASSOCIATION,  
INC.,**  
**Defendant.**

**NOTICE of ENTRY**  
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**ORDER EXTENDING TEMPORARY RESTRAINING**  
**ORDER**

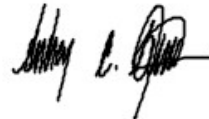
To: W. Mark Wilczynski, Esquire	_____	Maria T. Hodge, Esquire	_____
David F. Wentzel, Esquire	_____		_____
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Please take notice that on December 16, 2021  
a(n) ORDER EXTENDING TEMPORARY RESTRAINING ORDER  
dated December 15, 2021 was entered  
by the Clerk in the above-titled matter.

Dated: December 16, 2021

\_\_\_\_\_  
Tamara Charles  
Clerk of the Court

By:



\_\_\_\_\_  
Audrey C. Brin  
Court Clerk II

**FILED**

December 15, 2021 10:41 AM  
ST-2018-CV-00768  
TAMARA CHARLES  
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

\*\*\*\*\*

GREAT BAY CONDOMINIUM OWNERS	)	
ASSOCIATION, INC.,	)	
	)	CASE NO. ST-18-CV-768
Plaintiff,	)	
	)	
v.	)	ACTION FOR DECLARATORY
	)	JUDGMENT, TO CANCEL DEED
THE NEIGHBORHOOD ASSOCIATION, INC.,	)	AND TO QUIET TITLE
	)	
Defendant.	)	
<hr/>		

**ORDER EXTENDING TEMPORARY RESTRAINING ORDER**

**THIS MATTER** having come on for a hearing on November 19, December 8, 9 and 13, 2021, upon the motion of the Defendant, The Neighborhood Association, Inc. (“NA”), for a preliminary injunction (“the Motion”) against Plaintiff Great Bay Condominium Owners Association, Inc. (“Great Bay”), under the authority of V.I.R.Civ. P. 65(b), the Court having previously entered a temporary restraining order on November 12, 2021, the Court having heard the arguments of the parties, and having received evidence on the matter, and now having concluded that the preliminary injunction is appropriate and should be granted, and the Court being duly satisfied in the premises, it is hereby

**ORDERED** that the Temporary Restraining Order previously entered, shall be and is hereby **EXTENDED** for good cause until the issuance of an Order of Preliminary Injunction; and it is further

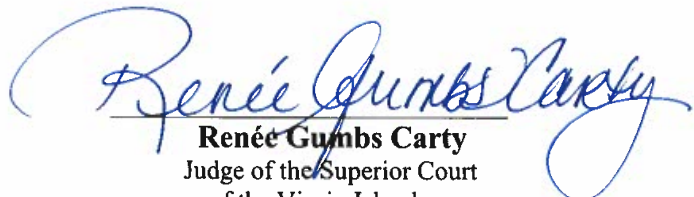
Great Bay Condominium Owners Association Inc.  
v. The Neighborhood Association, Inc.  
Case No. ST-18-CV-768  
Order Extending Temporary Restraining Order  
Page 2

**ORDERED** that having heard the preliminary arguments on the issue of security, the parties shall both file their briefs not later than **Friday, December 31, 2021, at 12:00 p.m.**; and it is further


**ORDERED** that the parties shall meet and confer and submit a proposed scheduling order by **Friday, January 7, 2022**; and it is further

**ORDERED** that a copy of this Order shall be directed to W. Mark Wilczynski, Esquire, David Wentzel, Esquire, and Maria Tankenson Hodge, Esquire.

Dated: December 15, 2021

  
**Renée Gumbs Carty**  
Judge of the Superior Court  
of the Virgin Islands

**ATTEST:**  
Tamara Charles  
Clerk of the Court

By:   
for Latoya Camacho  
Court Clerk Supervisor 12/15/2021

**FILED**

November 19, 2021 04:25 PM  
ST-2018-CV-00768  
TAMARA CHARLES  
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

_____ )		
GREAT BAY CONDOMINIUM OWNERS )		
ASSOCIATION, INC. )		CIVIL NO. ST-18-CV-768
	)	
PLAINTIFF, )		ACTION FOR DECLARATORY
V. )		JUDGMENT, TO CANCEL DEED
	)	AND TO QUIET TITLE
THE NEIGHBORHOOD ASSOCIATION, INC. )		
	)	
DEFENDANT. )		
_____ )		

**ORDER EXTENDING TEMPORARY RESTRAINING ORDER**

THIS MATTER HAVING COME ON FOR HEARING on November 19, 2021, upon the motion of the Defendant, The Neighborhood Association, Inc. ("NA"), for a preliminary injunction ("the Motion") against Plaintiff, Great Bay Condominium Owners Association, Inc. ("Great Bay"), under the authority of V.I.R.Civ.P. 65(b), the Court having previously entered a temporary restraining order on November 12, 2021, and having fixed November 19 for a hearing on the Motion, and the Court having heard the arguments of the parties, and having received some evidence on the matter, but having concluded that an adjournment is required to complete the taking of necessary testimony, and the Court being duly satisfied in the premises, NOW, THEREFORE,

IT IS HEREBY ORDERED that the Plaintiff's motion to dissolve the temporary restraining order is denied, and the Court concludes that it has jurisdiction to hear and proceed with the Motion, and it is

FURTHER ORDERED that having heard the parties on the issue of security, no bond will be required of NA in connection herewith, as the Court concludes that the Plaintiff will not incur

Great Bay Condominium Owners Ass'n, Inc. v. The Neighborhood Ass'n, Inc.  
Case No. ST-18-CV-768  
Order

any material costs or damages as a result of the TRO, for reasons discussed at the hearing, if it is later determined to have been wrongfully enjoined, and it is

FURTHER ORDERED that the matter is scheduled for continued hearing on the Motion on December 9, 2021, at 12:00 p.m., via Zoom, with an invitation to issue by the Clerk of the Court to the parties and their witnesses, the hearing to continue thereafter on December 13, 2021, commencing at 1 p.m. (AST), with the time period between 2 p.m. and 4 p.m. reserved for the testimony of Plaintiff's witness, Abbey Chung, and it is

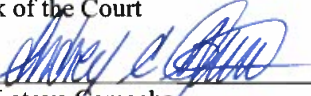
FURTHER ORDERED that the Temporary Restraining Order previously entered, shall be and is hereby extended, for good cause, to the conclusion of the hearing on the Motion;

FURTHER ORDERED that a copy of this Order shall be directed to W. Mark Wilczynski, Esquire, David Wentzel, Esquire, and Maria Tankenson Hodge, Esquire.

SO ORDERED this 19<sup>th</sup> day of November, 2021, at 3:55 o'clock pm.

  
HONORABLE RENEE GUMBS CARTY  
JUDGE OF THE SUPERIOR COURT

ATTEST:  
Tamara Charles  
Clerk of the Court

By:   
for Latoya Camacho  
Court Clerk Supervisor 11 19 2021

**FILED**

November 19, 2021 04:25 PM  
ST-2018-CV-00768  
TAMARA CHARLES  
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS**  
District of St. Thomas/St. John

**GREAT BAY CONDOMINIUM OWNERS  
ASSOCIATION, INC.,**  
Plaintiff

Case Number: **ST-2018-CV-00768**  
Action: **Declaratory Judgment**

v.

**THE NEIGHBORHOOD ASSOCIATION,  
INC.,**  
Defendant.

**NOTICE of ENTRY  
of  
ORDER EXTENDING TEMPORARY RESTRAINING  
ORDER**

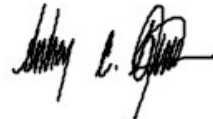
To: W. Mark Wilczynski, Esquire	_____	Maria T. Hodge, Esquire	_____
David F. Wentzel, Esquire	_____		_____
_____	_____		_____
_____	_____		_____
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_____	_____		_____
_____	_____		_____

Please take notice that on November 19, 2021  
a(n) ORDER EXTENDING TEMPORARY RESTRAINING ORDER  
dated November 19, 2021 was entered  
by the Clerk in the above-titled matter.

Dated: November 19, 2021

\_\_\_\_\_  
Tamara Charles  
Clerk of the Court

By:



\_\_\_\_\_  
Audrey C. Brin  
Court Clerk II



**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.	)	
	)	CIVIL NO. ST-18-CV-768
PLAINTIFF,	)	
V.	)	ACTION FOR DECLARATORY JUDGMENT, TO CANCEL DEED AND TO QUIET TITLE
THE NEIGHBORHOOD ASSOCIATION, INC.	)	
	)	
DEFENDANT.	)	

**ORDER**

THIS MATTER HAVING COME ON FOR CONSIDERATION upon the oral request of the Plaintiff, Great Bay Condominium Owners Association, Inc. (“Great Bay”) for the Court to require the posting of security by the Defendant, The Neighborhood Association, Inc. (“NA”), as a condition of the Court’s decision to grant the temporary restraining order entered November 12, 2021, and extended by orders of November 19 and December 15, 2021, until the Order of Preliminary Injunction is issued, and the Court having received the parties’ written briefs on the matter, and having considered the evidence adduced during the hearings on the subject motion, and having previously concluded that no bond should be required in this matter as the Plaintiff would not incur any material costs or damages as result of the TRO, because their invoices to NA members already included interest and late fees, and billed for the entire amount they claimed was due. Those same invoices could simply be reissued if the TRO or preliminary injunction were later to be vacated, and the same members Great Bay sought to collect from in its October, 2021, invoices, would readily be billed again, with whatever additional interest or late fees Great Bay then claims are due. Further, it was shown that Great Bay was able to notify the NA members the

invoices were rescinded by reason of the TRO with a mass email distribution to such members, at no cost to Great Bay. It is reasonable to conclude that an email to reinstate invoices, if such were found justified, could be similarly sent at no cost to Great Bay. Thus, there was no exposure to damages from the extended TRO, or the Preliminary Injunction the Court intends to enter, and no material cost of compliance with either, so the court concludes that no bond was required to protect Great Bay under the authority of V.I.R.Civ.P. 65(b). NOW, THEREFORE,

IT IS HEREBY ORDERED that the Plaintiff's motion to require the posting of a bond for security by NA as a condition of the grant of the extended temporary restraining order, and the preliminary injunction expected to follow, is denied, and the Court concludes that the Plaintiff will not incur any material costs or damages as a result of the extended TRO, for the reasons stated above, if it is later determined to have been wrongfully enjoined.

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HONORABLE RENE GUMBS CARTY  
JUDGE OF THE SUPERIOR COURT

**ATTEST:**

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**Clerk of the Court**

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

<b>GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.</b>	)	
	)	<b>CIVIL NO. ST-18-CV-768</b>
<b>PLAINTIFF,</b>	)	
<b>v.</b>	)	<b>ACTION FOR DECLARATORY JUDGMENT, TO CANCEL DEED AND TO QUIET TITLE</b>
<b>THE NEIGHBORHOOD ASSOCIATION, INC.</b>	)	
<b>DEFENDANT.</b>	)	

**PLAINTIFF'S BRIEF RE INJUNCTION BOND**

Plaintiff Great Bay Condominium Association, Inc. ("GBCOA"), by and through its undersigned counsel, pursuant to the Court's order entered on December 16, 2021, hereby submits its brief on the issue of security under V.I.R.Civ.P. 65(c).

**LEGAL STANDARDS**

Rule 65(c) of the Virgin Islands Rules of Civil Procedure states in relevant part:

The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.

*V.I.R.Civ.P.* 65(c). As the Supreme Court of the Virgin Islands explained in *Yusuf v.*

*Hamed*:

The purpose of this security is to guarantee that the enjoined party will be compensated for the expenses of complying with an erroneously issued injunction, as well as placing the moving party on notice of the maximum amount of compensation it could be forced to pay. Because it is generally settled that, with rare exceptions, a defendant wrongfully enjoined has recourse only against the bond, courts should err on the high side in setting the amount of security.

59 V.I. 841, 859-60 (internal quotation marks and citations omitted).

The security must be adequate to “assure the enjoined party that it may readily collect damages from the funds posted or the surety provided in the event that it was wrongfully enjoined, *without further litigation and without regard to the possible insolvency*” of the party seeking the injunction. *Yusuf*, 59 V.I. at 860 (emphasis supplied, alteration omitted) (quoting *Continuum Co. v. Incepts, Inc.*, 873 F.2d 801, 803 (5th Cir. 1989)). “Exceptions to the security bond requirement are so rare, that the requirement is almost mandatory.” *Treasure vs. Good Hope Country Day Sch.*, 2016 WL 5468373, \*4 (VI Super. Aug 26, 2016) (citing *Scanvec Amiable vs. Chang*, 80 Fed. Appx. 171, 175 (3d Cir. PA. 2003)). In discussing the narrow and rare circumstances in which an exception might be justified, the superior court in *Treasure* explained:

“Strict application of the security requirement may be inappropriate ... in noncommercial cases, [where] the court should consider the possible loss to the enjoined party together with the hardship that a bond requirement would impose on the applicant.”

*Treasure*, 2016 WL 5468373, at \*4 (quoting *Payne v. Fawkes*, 2014 U.S. Dist. LEXIS 127697, \*26 (D.V.I. Sept. 12, 2014) (alteration and ellipsis by the court)). Even in a noncommercial case, the request for a waiver must be denied if the movant fails to affirmatively demonstrate the existence of any hardship. See *Treasure*, 2016 WL 5468373, at \*4.

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**ARGUMENT**

**I. GBCOA IS ENTITLED TO ADEQUATE SECURITY**

**A. Defendant Has Not Shown Any Hardship to Justify Waiver of a Bond**

There is no basis for granting a waiver in this case of Rule 65(c)'s requirement that the movant post adequate security. The members of the Neighborhood Association ("NA") are the persons benefitting from the temporary restraining order and preliminary injunction, as it was these persons to whom GBCOA issued the invoices that have been enjoined. The evidence is uncontroverted that NA's members are comprised of corporate entities and individual owners. The two corporate entities, both of whom are affiliates of Ritz-Carlton/Marriott, own 141 of the 288 Residence Interests in the Suites, which translates to 49% of the total membership interests in NA. Defendant has made no showing that these multi-national corporations would suffer any hardship from having to post a bond.

Likewise, Defendant made no showing that the individual Suite owners would suffer any hardship from having to post a bond. Mr. Sal Cutrona was the only member of NA who testified at the hearing. In his affidavit submitted as part of Defendant's Motion for Temporary Restraining Order and Preliminary Injunction, Mr. Cutrona avers that he is a former partner in the international accounting firm of Arthur Andersen & Co., as well as a founder of the worldwide management and information consulting firm, Accenture, which Mr. Cutrona says is a publicly traded, multi-national professional services firm that reported revenues of \$44.33 billion in 2020. Mr. Cutrona's testimony provides no basis on which the Court reasonably may find that NA's individual members

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– all of whom purchased deeded fractional interests in a luxury vacation resort knowing that such interests carry an obligation to pay annual dues and membership fees – would suffer any hardship from having to post a bond. The evidence adduced at the hearing is uncontroverted that NA's members actually paid the CU-1 maintenance fees every single year from 2006 until 2017, which negates any inference they would suffer hardship from having to post a bond.

Defendant also made no showing that it, as a corporate entity and the only named Defendant in this case, would suffer any hardship from having to post a bond. NA's Articles of Incorporation and Bylaws give NA the power to assess its members for all costs relating to NA's administration and operation, including but not limited to CU-1's maintenance fees. NA undisputedly can assess its members for the amount need to provide adequate security in this case.

In short, since Defendant has not shown any hardship to justify waiver of the security bond required by V.I.R.Civ.P. 65(c), no waiver of the bond can be granted. See, *e.g.*, *Treasure*, 2016 WL 5468373 at \*4. The only question to be decided is the amount necessary to guarantee that GBCOA will be compensated for the damages incurred in complying with an erroneously issued injunction, without further litigation or resort to other enforcement proceedings. *Yusuf*, 59 V.I. at 860.

**B. THIS COURT SHOULD SET A MINIMUM BOND OF \$206,458**

The posting of an adequate bond is important because expenses and damages incurred as a result of a wrongful injunction might not be otherwise recoverable – and certainly not without incurring further costly litigation or other burdensome and/or time-consuming enforcement measures. “[A] defendant wrongfully enjoined has recourse only against the bond.” *Coral Mgmt. Group, LLC vs. Gov’t of the U.S. Virgin Islands*, 66 V.I. 552, 66 V.I. 552 (VI 2017). Therefore, this Court should “err on the high side” as the Supreme Court of the Virgin Islands has emphasized. *Yusuf*, 59 V.I. at 860.

The two major components of cost and expense GBCOA will incur if the temporary restraining order and preliminary injunction are found to have been wrongfully issued are: (1) interest on the amount being enjoined, which in the absence of the injunction GBCOA would have in hand as of the November 22, 2021 due date; and (2) the administrative costs of having to rebill the CU-1 assessments if the injunction is vacated.

As to the first category, the undisputed evidence before the Court shows that the CU-1 assessments that are the subject to the TRO and preliminary injunction total \$1,017,294. The evidence likewise is undisputed that as of January 1, 2022, the CU-1 assessments for 2022 totaling \$201,203 will become due.<sup>1</sup> These assessments also are enjoined by the TRO and preliminary injunction, whether indirectly or expressly. To calculate lost interest on these sums, the Court must determine the likely period of time

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<sup>1</sup> While these facts were established by witness testimony and documentary evidence at the hearing, the transcripts are not yet available; therefore, GBCOA is submitting herewith the affidavit of Tom Doyle, attached hereto as Exhibit A.

GBCOA will be deprived of available interest on these funds and the appropriate rate of interest to apply.

Time Period

The relevant time period to be used in calculating GBCOA's potential interest expense is the period beginning on the date the CU-1 invoices became due (November 22, 2021) and ending on the theoretical date a formal judicial determination will be made that the TRO and preliminary injunction were erroneously issued. Since this Court already has found a likelihood of success on the merits in favor of Defendant, the most likely theoretical date of such a judicial determination is the date on which a theoretical appeal from the TRO and preliminary injunction is decided. GBCOA submits that because of the unprecedented pandemic that has lengthened the timeline for all court matters in the Territory, as well as the actual timeframe within which the Supreme Court recently has decided appeals from injunctions issued by the Superior Court, a period of two years should be used. *See, e.g., Sam's Food Distributors, Inc. vs. NNA&O, LLC*, 73 V.I. 45 (VI 2020) (Supreme Court overturned injunction order by this Court more than two years after the injunction was issued).

Indeed, the conditions in the Territory have worsened since *Sam's Food* was decided last year. GBCOA requests that the Court take judicial notice of the fact that due to emergence of the highly-virulent Omicron variant active cases in the Territory over the last fourteen days have increased by **more than 1,600 percent (over 2,600 percent** in St. Thomas).<sup>2</sup>

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<sup>2</sup> <https://www.nytimes.com/interactive/2021/us/virgin-islands-covid-cases.html>, December 31, 2021.



Many Government offices have been closed for the time being as a result and, as this Court is aware, the Superior Court continues under significant strain as it struggles to deal with new and old matters. Accordingly, two years is a reasonable period of time to use in calculating GBCOA's interest expense resulting from the (theoretically) erroneous issuance of the TRO and preliminary injunction.

Interest Rate

The applicable rate of interest to be used in calculating GBCOA's potential interest expense is set forth in 11 V.I.C. § 951, which provides:

The rate of interest shall be nine (9%) per centum per annum on—

- (1) all monies which have become due;
- (2) money received to the use of another and retained beyond a reasonable time without the owner's consent, either express or implied;
- (3) money due upon the settlement of matured accounts from the day the balance is ascertained; and
- (4) money due or to become due where there is a contract and no rate is specified.

The due date for the CU-1 assessments, as stated on the invoices issued to NA's members and affirmed by the testimony at the hearing, was November 22, 2021. Use of Section 951 therefore is appropriate under subsections (1) and (2) of the statute. Using this rate of interest and applying it to the two-year period, the interest expense component of an adequate security bond in this case should be \$201,220.

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Costs of Rebilling the CU-1 Assessments

The second component of GBCOA's cost of complying with an erroneous TRO and preliminary injunction is the administrative cost to re-issue invoices to the Suites owners for the assessments being enjoined. As the testimony has established, GBCOA hired a third-party billing company, Concord, to handle the project of issuing the invoices, collecting the payments, and performing the accounting and reconciliation functions relating to the project. As set forth in the Affidavit of Abbey Chung attached hereto as Exhibit B, GBCOA paid Concord \$3,488 for its services relating to CU-1 assessments at issue. *Affidavit of Abbey Chung*, Ex. B hereto, at ¶ 3.

Additionally, under GBCOA's contract with Concord, the monthly charge for the latter's accounting and reconciliation services (currently suspended under the TRO and preliminary injunction) post issuance of the invoices is \$250. *Id.* at ¶ 4. The likely period of time for which these functions will be necessary after re-billing is three months for a total of \$750 for Concord to service that billing. *Id.* at ¶ 4. The services of a Concord employee or another administrative assistant to compile the information needed to create new invoices for each NA member will cost a total of approximately \$1,000. *Id.* at ¶ 5. Thus, the total cost to recalculate, prepare, and re-issue invoices for the CU-1 assessments and collect, account for and reconcile payments is estimated to be **\$5,238**. *Id.* at ¶ 7.

Adding together the interest expense of \$201,220 and the administrative costs of \$5,238 (at least) that would be incurred in connection with a future rebilling the assessments, the total amount of an adequate security bond is **\$206,458**. GBCOA

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requests that Defendant be ordered to post a bond in this amount.

**CONCLUSION**

Rule 65(c) requires the posting of a bond in an amount sufficient to compensate GBCOA for all expenses and damages incurred as a result of an erroneously issued injunction. No basis for granting a waiver of this requirement has been demonstrated. Considering the period of time for which GBCOA likely will be deprived of the funds that are the subject of the injunction, the statutory rate of interest to be applied, and the administrative expenses to be incurred in re-issuing the invoices at a future date, the Court should require Defendant to post security in the form of a cash bond in the amount of \$206,458.

Respectfully Submitted,

**LAW OFFICE OF W. MARK WILCZYNSKI, P.C.**

Dated December 31, 2021

/s/ W. Mark Wilczynski  
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- AND -

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**Attorney for Great Bay Condominium  
Owners Association, Inc.**



**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

<b>GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.</b>	)	<b>CIVIL NO. ST-18-CV-768</b>
	)	
<b>PLAINTIFF,</b>	)	<b>ACTION FOR DECLARATORY JUDGMENT, TO CANCEL DEED AND TO QUIET TITLE</b>
<b>v.</b>	)	
	)	
<b>THE NEIGHBORHOOD ASSOCIATION, INC.</b>	)	
	)	
<b>DEFENDANT.</b>	)	

**AFFIDAVIT OF TOM DOYLE**

I, Thomas Doyle, depose and state as follows:

1. I am an adult resident of Florida. I make this affidavit based on my personal knowledge and am competent to testify to the matters stated herein.
2. I am Treasurer of the Great Bay Condominium Owners Association, Inc. ("GBCOA"). GBCOA keeps and maintains regular accounts of amounts owed by members for regular and special assessments.
3. The total of the invoices GBCOA issued to members of the Neighborhood Association for unpaid CU-1 maintenance fees, including late fees and interest as provided for in the governing Declarations, is \$1,017,294. These invoices cover the period of 2017 through 2021. But for the issuance of the temporary restraining order and preliminary injunction in this case, the invoices were due on November 22, 2021.
4. The CU-1 maintenance fees for the year 2022, which total \$201,203, are due by December 31, 2021 based on the provisions of the governing Declarations and the regular invoicing practices of GBCOA and its managing agent. These fees will not be invoiced to NA or its members in light of the temporary restraining order and preliminary

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injunction issued by the Court in this case.

5. Using an interest rate of 9%, which I am advised is the statutory rate set forth in 11 V.I.C. § 951 as applicable to monies which have become due, and assuming that a two-year period is to be applied in calculating GBCOA's interest expense resulting from the loss of statutory interest on the unpaid CU-1 maintenance fees, GBCOA's interest expense is as follows:

***First Year (Nov. 22, 2021 – Nov. 22, 2022)***

$\$1,017,294 \times 9\% = \$91,556$

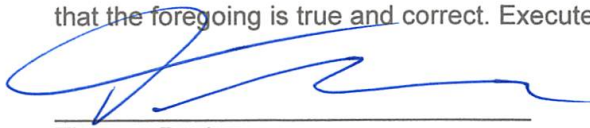
***Second Year (Nov. 22, 2022 – Nov. 22, 2023)***

$\$1,017,294 + \$201,203 \times 9\% = \$109,664$

***Grand Total:***

$\$91,556 + 109,664 = \mathbf{\$201,220}$

I declare under penalty of perjury under the laws of the United States Virgin Islands that the foregoing is true and correct. Executed on December 31, 2021.



Thomas Doyle

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
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<u>GREAT BAY CONDOMINIUM OWNERS</u>	)	
<u>ASSOCIATION, INC.</u>	)	CIVIL NO. ST-18-CV-768
	)	
PLAINTIFF,	)	ACTION FOR DECLARATORY
v.	)	JUDGMENT, TO CANCEL DEED
	)	AND TO QUIET TITLE
THE NEIGHBORHOOD ASSOCIATION, INC.	)	
	)	
<u>DEFENDANT.</u>	)	

**AFFIDAVIT OF ABIGAIL CHUNG**

I, Abigail Chung, depose and state as follows:

1. I am an adult resident of Southlake, Texas. I make this affidavit based on my personal knowledge and am competent to testify to the matters stated herein.

2. I am President of Great Bay Condominium Owners Association, Inc. ("GBCOA"). In this capacity, I was personally responsible for and handled the negotiations with the third-party billing agent, Concord, which GBCOA used to issue the invoices to NA's members for the CU-1 invoices that are the subject of the temporary restraining order and preliminary injunction in this case. I also signed the final contract with Concord on behalf of GBCOA.

3. Pursuant to the terms of the contract, GBCOA paid Concord \$3488 in fees for services rendered in connection with issuing the invoices for the CU-1 maintenance fees.

4. But for the temporary restraining order and preliminary injunction, GBCOA would have continued to use Concord's services to collect, account for and reconcile payments received from NA's members for at least three months beyond the date the

invoices were due. The cost of such ongoing services under GBCOA's contract with Concord is \$250 per month.

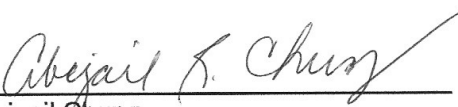
5. If GBCOA were to reissue the invoices to NA's members for unpaid CU-1 maintenance fees, the fees to be paid to Concord would be substantially the same as the fees paid for the previously-issued invoices, unless Concord raises its rates. The only other difference I foresee is that, whereas I personally took the time to compile the information needed to calculate the invoices for each Suite owner, I would not be able to perform that task for a future rebilling, due to the time commitment required and in light of my other personal and professional commitments. I would delegate that task to a Concord employee or hire a temporary administrative assistant to perform the task. Based on my experience, I estimate the additional cost to outsource this function would be \$1,000.

6. In the event of a future rebilling of the CU-1 maintenance fees to NA's members, GBCOA would engage Concord to provide collection, accounting and reconciliation services for a period of at least three months after the invoices are due, since our historical experience counsels that a significant number of members pay their assessments late. I expect the cost to engage Concord to perform these services would be substantially similar as under the current contract, \$250 per month.

7. Thus, I calculate that the administrative costs GBCOA would incur to reissue the invoices for CU-1 maintenance fees to NA's members in the future total approximately \$5,238.



I declare under penalty of perjury under the laws of the United States Virgin Islands  
that the foregoing is true and correct. Executed on December 31, 2021.

  
Abigail Chung

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.	)	CIVIL NO. ST-18-CV-768
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PLAINTIFF,	)	ACTION FOR DECLARATORY
v.	)	JUDGMENT, TO CANCEL DEED
	)	AND TO QUIET TITLE
THE NEIGHBORHOOD ASSOCIATION, INC.	)	
	)	
DEFENDANT.	)	

**PLAINTIFF'S MOTION TO STRIKE  
DEFENDANT'S REPLY BRIEF RE INJUNCTION BOND**

**NOW COMES** the Plaintiff, by and through its undersigned counsel, and hereby moves this Court for an Order striking the Defendant's *Reply to Plaintiff's Brief re Injunction Bond*, filed on January 5, 2022. The Defendant's filing is a violation of this Court's direction issued from the bench on December 13, 2021, which the Defendant expressly acknowledged on the record.

THE COURT: Well, it's just seven days on each side to submit a written brief, seven days.

ATTORNEY WILCZYNSKI: Yes, Your Honor, thank you.

THE COURT: All right.

ATTORNEY HODGE: Is the same deadline for both sides, Judge, one seven-day period, not a reply to the other?

THE COURT: No replies.

ATTORNEY HODGE: Very well.

*Transcript of the Hearing of December 13, 2021, 172/23 to 173/8, Exhibit 1.*

The Plaintiff moves to strike the offending *Reply to Plaintiff's Brief re Injunction Bond*. "[T]he authority to strike is actually inherent in the authority of a court to control its docket, including what papers and other items become part of the record." *Der Weer vs. Hess Oil V.I. Corp.*, 64 V.I. 107, 126 (V.I. Super. 2016), citing *NRDC v. United States FDA*, 884 F. Supp. 2d 108, 115 n.5 (S.D.N.Y. 2012) ("a court has inherent

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authority to strike any filed paper which it determines to be abusive or otherwise improper under the circumstances.") It has long been held that a court controls its files and the records therein and may strike any papers that are improper or objectionable. George L. Phillips, *An Exposition of the Principles of Pleading Under the Codes of Civil Procedure* 260-61 (1896), as quoted in *Der Weer*, supra.

Furthermore, this Court has statutory power to "compel obedience to its judgments, orders, and process, and to the orders of a judge out of court, in all actions, or proceedings pending therein." 4 V.I.C. § 243(4); and see 4 V.I.C. § 281(2) ("Every judicial officer shall have power to compel obedience to his [sic] lawful orders.") The Virgin Islands Code further provides that any person who "willfully violates, neglects or refuses to observe or perform any lawful order of a court shall be guilty of contempt of court and upon being found guilty of such contempt may be punished as provided by law." 4 V.I.C. § 244.

This Court can and should strike the Plaintiff's improper reply brief and require the Defendant to show cause why it should not be held in civil contempt for the violation of the Court's order. Should this Court decide not to strike the reply brief, GBCOA asks for leave to provide a response to the vituperous allegations and arguments set forth therein. Fairness demands action upon this request.

WHEREFORE, the Plaintiff respectfully prays that this Honorable Court issue an Order striking the Defendant's *Reply to Plaintiff's Brief re Injunction Bond*, January 5, 2022, as improper, or to provide the Plaintiff with a fair opportunity to address the document, and/or to such other and further relief as this Court deems proper and just.

Great Bay Condominium Association, Inc. v. The Neighborhood Association, Inc.  
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Plaintiff's Motion to Strike Defendant's Reply Brief re Injunction Bond

Respectfully Submitted,

**LAW OFFICE OF W. MARK WILCZYNSKI, P.C.**

Dated January 5, 2022

/s/ W. Mark Wilczynski  
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- AND -

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**Attorney for Great Bay Condominium  
Owners Association, Inc.**

**CERTIFICATE OF SERVICE**

I **CERTIFY** that on this the 5<sup>th</sup> day of January, 2022, I caused a true and exact copy of the foregoing **PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S REPLY BRIEF RE INJUNCTION BOND** to be filed using the Court's C-Track E-Filing system which will send notice, unless otherwise indicated below, of same:

**MARIA T. HODGE, ESQ.**  
Hodge & Hodge  
1340 Taarneberg  
St. Thomas VI 00802  
Tel: (340) 774-6845  
Fax: (340) 714-1848  
[maria@hodgelawvi.com](mailto:maria@hodgelawvi.com)  
**Counsel for Defendant**

*This document complies with the page or word limitation set forth in Rule 6-1(e).*

By: /s/ Carolyn C. Duncan

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
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V.	)	ACTION FOR DECLARATORY JUDGMENT, TO CANCEL DEED AND TO QUIET TITLE
THE NEIGHBORHOOD ASSOCIATION, INC.	)	
DEFENDANT.	)	

**ORDER**

**THIS MATTER** having come before the Court on the Plaintiff's Motion to Strike Defendant's Reply to Plaintiff's Brief re Injunction Bond, and the Court being advised in the premises; the Court hereby finds:

That the Defendant willfully violated this Court's express direction from the bench on December 13, 2021 that no reply briefs were to be filed in response to the parties' written briefs on the issue of adequate security.

**IT IS HEREBY ORDERED**

That the *Reply to Plaintiff's Brief re Injunction Bond* is hereby STRICKEN; and it is further

**ORDERED** that a copy of this Order shall be served upon all parties.

**SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
**HONORABLE RENEE GUMBS CARTY**  
Judge of the Superior Court of the Virgin Islands

**ATTEST:**  
**Tamara Charles**  
Clerk of the Court

By: \_\_\_\_\_  
Court Clerk \_\_\_/\_\_\_/\_\_\_

# E-Filing Submission Confirmation

The following electronic filing(s) were successfully submitted. Please keep a copy of this confirmation for your records.

**Submitted Date** 01-05-2022 03:35 PM  
**E-File Confirmation #** 15441641411350213

**Filings Submitted:**

<b>Court</b>	<b>Case Number</b>	<b>Filing Type(s)</b>	<b>Documents</b>	<b>Fees</b>
Superior Court of the Virgin Islands	ST-2018-CV-00768	Motion - Motion	3	\$ 0.00
<u>Total</u>				<u>\$ 0.00</u>

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.	)	
	)	CIVIL NO. ST-18-CV-768
PLAINTIFF,	)	
V.	)	ACTION FOR DECLARATORY JUDGMENT, TO CANCEL DEED AND TO QUIET TITLE
THE NEIGHBORHOOD ASSOCIATION, INC.	)	
DEFENDANT.	)	

**REPLY TO PLAINTIFF’S MOTION TO STRIKE**

The Neighborhood Association, Inc. (“NA”) respectfully submits that while the Court ordered the parties to submit “written briefs” within seven days, it did not authorize and presumably did not expect the Plaintiff to file two *affidavits* in addition to its brief, particularly when the affidavits contained false and misleading statements. This extra and unauthorized filing effectively required NA to file a response on the “plainly false and misleading affidavits” filed by Great Bay *in addition to its brief*. If the Court deems it appropriate to strictly limit the parties to a single brief on the issue of security, then NA requests that the Plaintiff’s affidavits should, likewise, be stricken.

DATED: January 5, 2022

RESPECTFULLY SUBMITTED,

/s/ Maria T. Hodge  
HODGE & HODGE  
By: Maria Tankenson Hodge (VI Bar #170)  
1340 Taarneberg  
St. Thomas, V.I. 00802  
(340) 774-6845  
maria@hodgelawvi.com

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 5th day of January, 2022, a true and correct copy of the foregoing was served via the Court's electronic filing system, upon:

W. Mark Wilczynski, Esq.  
Law Offices of W. Mark Wilczynski, P.C.  
Palm Passage, Suite C20-22  
P.O. Box 1150  
St. Thomas, VI 00804-1150  
Email: [mwilczynski@usvilaw.com](mailto:mwilczynski@usvilaw.com)  
*Counsel for Plaintiff*

David F. Wentzel, Esq.  
Wentzel Law Offices  
77 W. Washington St. Suite 2100  
Chicago, Ill. 60602  
Email: [dwentzel@wentzellaw.com](mailto:dwentzel@wentzellaw.com)  
*Counsel for Plaintiff*

/s/ Maria T. Hodge



**FILED**

January 05, 2022 04:37 PM  
ST-2018-CV-00768  
TAMARA CHARLES  
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

_____	)	
GREAT BAY CONDOMINIUM OWNERS	)	
ASSOCIATION, INC.,	)	CIVIL NO. ST-18-CV-768
	)	
PLAINTIFF,	)	ACTION FOR DECLARATORY
V.	)	JUDGMENT, TO CANCEL DEED
	)	AND TO QUIET TITLE
THE NEIGHBORHOOD ASSOCIATION, INC.,	)	
	)	
DEFENDANT.	)	
_____	)	

**ORDER**

THIS MATTER HAVING COME ON FOR CONSIDERATION upon the oral request of the Plaintiff, Great Bay Condominium Owners Association, Inc. ("Great Bay") for the Court to require the posting of security by the Defendant, The Neighborhood Association, Inc. ("NA"), as a condition of the Court's decision to grant the temporary restraining order entered November 12, 2021, and extended by orders of November 19 and December 15, 2021, until the Order of Preliminary Injunction is issued, and the Court having received the parties' written briefs on the matter, and having considered the evidence adduced during the hearings on the subject motion, and having previously concluded that no bond should be required in this matter as the Plaintiff would not incur any material costs or damages as result of the TRO, because their invoices to NA members already included interest and late fees, and billed for the entire amount they claimed was due.

Considering those same invoices could simply be reissued if the TRO or preliminary injunction were later to be vacated, and the same members Great Bay sought to collect from in its October 2021, invoices, would readily be billed again, with whatever additional interest or late fees

*Great Bay Condominium Owners Association Inc.*  
*v. The Neighborhood Association, Inc.*  
Case No. ST-18-CV-768  
Order

accrued and as it was shown that Great Bay was able to promptly notify the NA members the invoices were rescinded by reason of the TRO with a mass email distribution to such members, at no cost to Great Bay, it can be concluded that a significant sum of security is unnecessary. Even in light of the Omicron variant surge, Great Bay can easily re-issue updated invoices and such task is neither burdensome, nor does it create a financial hardship for Great Bay, thus it is reasonable to conclude that an email to reinstate invoices, if necessary, could be similarly sent at either no cost or minimal cost to Great Bay. Consequently, there is no exposure to damages from the extended TRO, or the Preliminary Injunction the Court intends to enter, and no material cost of compliance with either.

Accordingly, the Court concludes as per Great Bay's contractual obligations with Concord, that the minimal cost of Four Thousand, Two Hundred Thirty-Eight (\$4,238) Dollars is sufficient to protect Great Bay under the authority of V.I.R. Civ. P. 65(b). The Court being duly satisfied in the premises, it is hereby

**ORDERED** that the Plaintiff's motion to require the posting of a substantial bond for security by NA as a condition of the grant of the extended temporary restraining order, and the preliminary injunction expected to follow, is **DENIED**, in part; and it is hereby

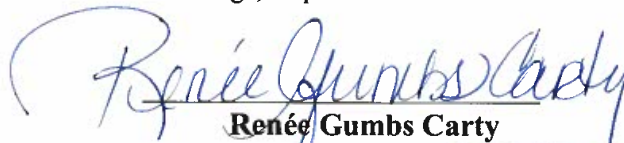
**ORDERED** that the Court concludes that the Plaintiff will not incur any significant material costs or damages as a result of the extended TRO, but will allow for the nominal bond of **Four Thousand, Two Hundred Thirty-Eight (\$4,238) Dollars** for the reasons stated above, if it is later determined to have been wrongfully enjoined; and it is further

*Great Bay Condominium Owners Association Inc.*  
*v. The Neighborhood Association, Inc.*  
Case No. ST-18-CV-768  
Order

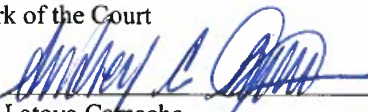
**ORDERED** that the bond shall be posted within **Ten (10) days** of the date of this Order;  
and it is further

**ORDERED** that a copy of this Order shall be directed to W. Mark Wilczynski,  
Esquire, David Wentzel, Esquire, and Maria Tankenson Hodge, Esquire.

Dated: January 5, 2022

  
**Renée Gumbs Carty**  
Judge of the Superior Court  
of the Virgin Islands

**ATTEST:**  
Tamara Charles  
Clerk of the Court

By:   
Latoya Camacho  
Court Clerk Supervisor 1/7/2022



IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS and ST. JOHN

\*\*\*\*\*

GREAT BAY CONDOMINIUM OWNERS ASSOCIATION	)	
	)	
Plaintiff	)	Case No. ST-18-CV-768
	)	
vs.	)	ACTION FOR DAMAGES
	)	
THE NEIGHBORHOOD ASSOCIATION, INC.	)	
	)	
Defendant.	)	
_____	)	

**THE NEIGHBORHOOD ASSOCIATION, INC. NOTICE OF POSTING OF BOND FOR  
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

**COMES NOW**, Defendant, The Neighborhood Association, Inc., and gives notice of the posting of a cash bond, with the Clerk of the Court, in the amount of \$4,238.00, as required by and in compliance with the order of the Court entered January 5, 2022, as security under V.I.R. Civ. P. 65(b).

**Respectfully submitted,  
HODGE & HODGE**

Dated: January 11, 2022

By: /s/ Maria T. Hodge  
Maria Tankenson Hodge, Esq.  
1340 Taarneberg, St. Thomas, V.I. 00802  
Tel.: (340) 774-6845 || fax.: (340) 776-8900  
[maria@hodgelawvi.com](mailto:maria@hodgelawvi.com)  
*Attorney for Defendant, The Neighborhood  
Association, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11th day of January, 2022, I caused a true and exact copy of the foregoing to be served via the Court's electronic filing system:

W. Mark Wilczynski, Esq.  
Palm Passage, Suite C20-22 || P.O. Box 1150  
St. Thomas, US Virgin Islands, 00801  
*Attorney for Plaintiff, Great Bay Condominium Owners Association*  
[mark@usvilaw.com](mailto:mark@usvilaw.com)

David F. Wentzel, Esq.  
Wentzel Law Offices  
77 W. Washington St. Suite 2100  
Chicago, Ill. 60602  
Email: [dwentzel@wentzellaw.com](mailto:dwentzel@wentzellaw.com)  
Counsel for Plaintiff

/s/ Maria T. Hodge



The Appellant/Plaintiff alleges error and seeks review of the following orders of the Superior Court:

1. *Order for Temporary Restraining Order*, November 12, 2021;
2. *Order Extending Temporary Restraining Order*, November 19, 2021;
3. *Order Extending Temporary Restraining Order*, December 15, 2021;
4. *Order setting injunction bond amount*, January 5, 2022 (entered on January 10, 2022);
5. Orders and rulings from the bench in hearings conducted on the Temporary Restraining Order; and
6. All Orders and rulings concerning injunctive relief adverse to Appellant/Plaintiff.

Appellant Plaintiff asserts that the Superior Court errors included but are not limited to the following: (i) undertaking to consider Appellee/Defendant's *ex parte* Motion for Temporary Restraining Order and Preliminary Injunction and granting such relief in the absence of any claim for injunctive relief (or any affirmative claim for relief) in movant's pleadings on file, and in the absence of any allegations of fact in movant's pleadings showing entitlement to an injunction; (ii) granting an *ex parte* temporary restraining order on insufficient evidence from movant; (iii) finding that movant demonstrated a likelihood of success on the merits; (iv) finding that movant would suffer irreparable harm; (v) granting preliminary relief that resulted



in greater harm to Plaintiff/Appellant than the harm claimed by movant; (vi) finding that the public interest favored granting the *ex parte* temporary restraining order; (vii) granting an *ex parte* temporary restraining order where the movant failed to certify in writing the reasons why formal notice should not be required; (viii) granting the *ex parte* temporary restraining order by immediately signing movant's draft order which contained findings of fact and conclusions of law for which no evidence was presented and that pertain to issues not raised by any party's pleadings; (ix) granting an overly broad *ex parte* temporary restraining order not specifically tailored to the harms alleged; (x) granting the *ex parte* temporary restraining order where there is no relationship between the injury claimed in the motion for injunctive relief and the underlying complaint; (xi) granting the *ex parte* temporary restraining order where movant sought to enjoin collection of a debt as well as "rescission" of the invoices relating to the debt; (xii) granting an *ex parte* temporary restraining order that effectively nullified numerous provisions of the Great Bay Condominium Declarations and enjoined Plaintiff from exercising its lawful power under the Declarations; (xiii) initially granting the *ex parte* temporary restraining order without requiring security in violation of V.I.R.Civ.P. 65(c); (xiv) extending the *ex parte* temporary restraining order without requiring security in violation of V.I.R.Civ.P. 65(c); (xv) denying the Appellant/Plaintiff's motion to dissolve the *ex parte* temporary restraining order; (xvi) extending the *ex parte*

Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.  
S. Ct. Civ. No. 2022-\_\_\_\_\_  
January 14, 2022

temporary restraining order for an unreasonable period of time in excess of fourteen days without a finding of good cause; (xvii) after conducting a hearing on the Motion for Temporary Restraining Order and Preliminary Injunction, granting a preliminary injunction without complying with V.I.R.Civ.P. 65(d) and instead extending the *ex parte* temporary restraining order *sine die*, indicating it would issue its opinion “in the spring”; (xviii) setting an unreasonably low amount of security, insufficient to make the Appellant/Plaintiff whole should this Court find them improperly enjoined; (xix) setting nominal security on the temporary restraining order and preliminary injunction without a showing of hardship by the movant; (xx) allowing Appellee/Defendant to seek injunctive relief on behalf of its members without a finding of associational or representational standing; and (xxi) such other actions that may be identified as this proceeding progresses.

**CORPORATE DISCLOSURE PURSUANT TO V.I.R.App.P. 18**

Great Bay Condominium Owners Association, Inc. is a not-for-profit Virgin Islands corporation.

Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.  
S. Ct. Civ. No. 2022-\_\_\_\_\_  
January 14, 2022

Respectfully submitted,

DATED: January 14, 2022

/s/ W. Mark Wilczynski  
**W. MARK WILCZYNSKI, ESQUIRE**  
Law Office of W. Mark Wilczynski, P.C.  
*Counsel for Plaintiff:*  
**GREAT BAY CONDOMINIUM  
OWNERS ASSOCIATION, INC.**  
Palm Passage, Ste. C20-22  
PO Box 1150  
St. Thomas, Virgin Islands 00804-1150  
Tel: (340) 774-4547  
[mwilczynski@usvilaw.com](mailto:mwilczynski@usvilaw.com)  
V.I. BAR NO. 515

- and -

**DAVID F. WENTZEL, ESQ.**  
Wentzel Law Offices  
*Counsel for Plaintiff:*  
**GREAT BAY CONDOMINIUM  
OWNERS ASSOCIATION, INC.**  
77 W. Washington St., Suite 2100  
Chicago, IL 60602  
Tel: (312) 697-0500  
Fax: (312) 697-0505  
Email: [dwentzel@wentzellaw.com](mailto:dwentzel@wentzellaw.com)

Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.  
S. Ct. Civ. No. 2022-\_\_\_\_\_  
January 14, 2022

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 14<sup>th</sup> day of January, 2022, I caused a true and exact copy of the foregoing **NOTICE OF APPEAL** to be filed using the Court's E-Filing system with notice by email to:

Maria T. Hodge, Esq.  
Hodge & Hodge  
1340 Taarneberg  
St. Thomas V. I. 00802  
Tel: (340) 774-6845  
Fax: (340) 714-1848  
[maria@hodgelawvi.com](mailto:maria@hodgelawvi.com)  
***Counsel for Defendant***

By US Mail to:

Hon. Renee Gumbs-Carty  
Superior Court of the Virgin Islands  
Alexander A. Farrelly Justice Center  
5400 Veteran's Drive, Suite 1  
St. Thomas, VI 00802

By: \_\_\_/s/ W. Mark Wilczynski

# E-Filing Submission Confirmation

The following electronic filing(s) were successfully submitted. Please keep a copy of this confirmation for your records.

**Submitted Date** 01-14-2022 02:24 PM  
**E-File Confirmation #** 15441642184556116  
**Payment Confirmation #** 0bb6a85d-1bd6-4653-a756-edc9bda391d5

## Filings Submitted:

<b>Court</b>	<b>Case Number</b>	<b>Filing Type(s)</b>	<b>Documents</b>	<b>Fees</b>
Supreme Court of the Virgin Islands		Initiating Document - Notice of Appeal	1	\$ 105.00
<u>Total</u>				<u>\$ 105.00</u>

IN THE SUPERIOR COURT  
OF THE VIRGIN ISLANDS

**FILED**

March 30, 2022 07:40 AM  
ST-2018-CV-00768  
TAMARA CHARLES  
CLERK OF THE COURT

**SUPERIOR COURT OF THE VIRGIN ISLANDS  
OFFICE OF THE CLERK  
DIVISION OF ST. THOMAS / ST. JOHN**

Date: March 26, 2022

Veronica Handy, Esq.  
Clerk of the Court  
Supreme Court of the Virgin Islands  
P.O. Box 590  
St. Thomas, USVI 00801

**CASE CAPTION: GREAT BAY CONDOMINIUM OWNERS' ASSOCIATION, INC. vs.  
THE NEIGHBORHOOD ASSOCIATION, INC.**

**SUPER. CT. CASE NO. ST-2018-CV-00768 S.CT. CASE NO. 2022-0002**


Dear Attorney Handy:

Please find enclosed the Superior Court E-Record in the above references case.

This letter further serves as the Certificate of Completion.

Sincerely,

TAMARA CHARLES  
CLERK OF THE COURT

By:   
Paula Claxton  
Court Clerk III

Received by: \_\_\_\_\_

Dated: \_\_\_\_\_

**A.001526**

March 26, 2022

**INDEX**

**CASE CAPTION: GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC. vs.  
THE NEIGHBORHOOD ASSOCIATION, INC.**

**SUPER. CT. CASE NO. ST-2018-CV-00768 S.CT. CIV. NO. 2022-0002**

<b>DOCUMENT (S)</b>	<b>PAGES NOS.</b>
<b>CERTIFIED DOCKET SHEET: .....</b>	<b>15</b>
<b>ORDER(S) DATED: <u>11-12-2021,11-15-2021, 11-19-2021 &amp; 01-05-2022</u> ....</b>	<b>15</b>
<b>OFFICIAL TRANSCRIPT OF HEARING(S) DATED: 11-16-2021, 11-19-2021, 12-08-2021, 12-09-2021 &amp; 12-13-2021 .....</b>	<b>821</b>
<b>COVER LETTER .....</b>	<b>1</b>
<b>TOTAL PAGES: .....</b>	<b>852</b>

Sincerely,

**TAMARA CHARLES  
CLERK OF THE COURT**

By:   
**PAULA CLAXTON  
COURT CLERK II**

**Superior Court of the Virgin Islands  
Docket Sheet**

<b>Case #</b>	ST-2018-CV-00768	<b>Judge</b>	Hon. Renee Gumbs Carty
<b>Case Title</b>	Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.	<b>Case Type</b>	Civil - Real Property - Declaratory Judgment

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
151	03-25-2022 10:17 AM	Motion - Motion Received	Official		Plaintiff's request for ruling on scheduling order Submitted by W. Mark Wilczynski, Esq.	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
150	03-18-2022 02:28 PM	Notice - Notice From The Supreme Court Regarding Appeal Received	Official		Supreme Court Scheduling Order received. Ordered that pursuant to V.I.R.APP.P 11(b), the Clerk of the Superior Court shall file the E-RECORD on or before April 1, 2022.	
149	01-26-2022 03:13 PM	Notice - Notice Of Service	Official		Notice Of Service--Plaintiff Great Bay Condominium Owners Association, Inc.'s Notice of Service of Second Set of Discovery Requests to Defendant The Neighborhood Association, Inc.	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
148	01-20-2022 03:09 PM	Transcript - FTR Transcript Requested	Official		FTR Transcript Requested	
147	01-14-2022 10:05 AM	Notice - Notice From The Supreme Court Regarding Appeal Received	Official		Supreme Court Docketing Order received. Appeal Docketed as SCT-CIV-2022-0002.	
146	01-14-2022 10:02 AM	Notice - Notice From The Supreme Court Regarding Appeal Received	Official		Notice of Appeal received from the Supreme Court.	
145	01-12-2022 10:18 AM	Notice - Notice of Compliance with Court's Order	Official		Notice of Compliance with Court's Order	Maria T. Hodge On Behalf of THE NEIGHBORHOOD ASSOCIATION, INC.
144	01-11-2022 12:05 PM	Financial - Payment Received	Official		Receipt #: 215420 Payor: THE NEIGHBORHOOD ASSOCIATION, INC., Amount: \$4,238.00	
143	01-10-2022 04:39 PM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	
141	01-10-2022 08:56 AM	Notice - Notice of Filing	Official		PLAINTIFF'S NOTICE OF FILING RE DISCOVERY SCHEDULING	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
142	01-10-2022 09:08 AM	Notice - Notice of Filing	Official		THE NEIGHBORHOOD	Maria T. Hodge On



**Superior Court of the Virgin Islands  
Docket Sheet**

<b>Case #</b>	ST-2018-CV-00768	<b>Judge</b>	Hon. Renee Gumbs Carty
<b>Case Title</b>	Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.	<b>Case Type</b>	Civil - Real Property - Declaratory Judgment

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
					ASSOCIATION, INC. NOTICE OF FILING PROPOSED ORDER FOR ANY AMENDMENT TO THE EXISTING SCHEDULING ORDER	Behalf of THE NEIGHBORHOOD ASSOCIATION, INC.
137	01-05-2022 04:37 PM	Order - Order Signed	Official		Order Signed by Judge Renee Gumbs Carty.	
140	01-10-2022 08:01 AM	Response - Reply Motion	Official		Reply to Plaintiff's Motion to Strike	Maria T. Hodge On Behalf of THE NEIGHBORHOOD ASSOCIATION, INC.
139	01-10-2022 07:57 AM	Motion - Motion Received	Official		Plaintiff's Motion to Strike Defendant's Reply Brief Re Injunction Bond	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
138	01-07-2022 08:22 AM	Notice - Notice of Filing	Official		PLAINTIFF'S NOTICE OF FILING OF PROPOSED ORDER CONCERNING THE BRIEF ON INJUNCTION BOND	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
136	01-05-2022 10:52 AM	Response - Opposition Received	Official		Reply to Plaintiff's Brief Injunction Bond	Maria T. Hodge On Behalf of THE NEIGHBORHOOD ASSOCIATION, INC.
135	01-04-2022 11:23 AM	Brief - Briefing Letter	Official		PLAINTIFF'S BRIEF RE INJUNCTION BOND	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
134	01-03-2022 11:14 AM	Brief - Respondent Brief	Official		Respondent Brief Exhibits Attach	Maria T. Hodge On Behalf of THE NEIGHBORHOOD ASSOCIATION, INC.
133	12-16-2021 10:43 AM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	
132	12-15-2021 10:41 AM	Order - Order Signed	Official		Order Extending Temporary Restraining Order Signed by Judge Renee Gumbs Carty.	
131	12-13-2021 10:17 AM	Hearing - Record Of Proceeding	Official		Record Of Proceeding	
130	12-10-2021 04:13 PM	Notice - Notice of Filing	Official		NOTICE OF FILING CORRECTED EXHIBIT 23 FOR	W. Mark Wilczynski, Esq. On Behalf of

**Superior Court of the Virgin Islands  
Docket Sheet**

<b>Case #</b>	ST-2018-CV-00768	<b>Judge</b>	Hon. Renee Gumbs Carty
<b>Case Title</b>	Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.	<b>Case Type</b>	Civil - Real Property - Declaratory Judgment

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
					HEARING ON PRELIMINARY INJUNCTION	GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
129	12-10-2021 04:01 PM	Notice - Notice of Filing	Official		Notice of Filing	Maria T. Hodge On Behalf of THE NEIGHBORHOOD ASSOCIATION, INC.
128	12-10-2021 09:31 AM	Notice - Notice of Filing	Official		NOTICE OF FILING ADDITIONAL EXHIBIT FOR HEARING ON PRELIMINARY INJUNCTION	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
126	12-09-2021 10:18 AM	Hearing - Record Of Proceeding	Official		Record Of Proceeding	
127	12-09-2021 11:06 AM	Notice - Notice of Filing	Official		THE NEIGHBORHOOD ASSOCIATION, INC. NOTICE OF FILING ADDITIONAL EXHIBIT FOR HEARING ON PRELIMINARY INJUNCTION	Maria T. Hodge On Behalf of THE NEIGHBORHOOD ASSOCIATION, INC.
125	12-08-2021 10:16 AM	Hearing - Record Of Proceeding	Official		Record Of Proceeding	
124	12-07-2021 04:58 PM	Notice - Notice of Filing	Official		Notice of Filing	
123	12-07-2021 04:58 PM	Notice - Notice of Filing	Official		Notice of Filing	
122	12-07-2021 02:08 PM	Notice - Notice of Filing	Official		THE NEIGHBORHOOD ASSOCIATION, INC. NOTICE OF FILING ADDITIONAL EXHIBIT FOR HEARING ON PRELIMINARY INJUNCTION	Maria T. Hodge On Behalf of THE NEIGHBORHOOD ASSOCIATION, INC.
121	12-06-2021 04:04 PM	Case Transcript - Transcript Received	Official		Transcript Request Form received	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
120	11-19-2021 04:25 PM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	
119	11-19-2021 04:25 PM	Order - Order Signed	Official		Order Signed by Judge Renee Gumbs Carty.	
118	11-19-2021 12:46 PM	Hearing - Record Of Proceeding	Official		Record Of Proceeding	
117	11-19-2021 09:17 AM	Notice - Notice of Filing	Official		THE NEIGHBORHOOD ASSOCIATION, INC. NOTICE OF FILING CORRECTED EXHIBIT O FOR HEARING ON ASSOCIATION, INC.	Maria T. Hodge On Behalf of THE NEIGHBORHOOD ASSOCIATION, INC.

**Superior Court of the Virgin Islands  
Docket Sheet**

<b>Case #</b>	ST-2018-CV-00768	<b>Judge</b>	Hon. Renee Gumbs Carty
<b>Case Title</b>	Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.	<b>Case Type</b>	Civil - Real Property - Declaratory Judgment

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
					PRELIMINARY INJUNCTION	
116	11-19-2021 08:50 AM	Response - Reply	Official		PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
113	11-19-2021 08:31 AM	Notice - Notice of Filing	Official		PLAINTIFF'S EXHIBIT LIST	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
115	11-19-2021 08:35 AM	Notice - Notice of Filing	Official		Notice of Filing	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
114	11-19-2021 08:32 AM	Notice - Notice of Filing	Official		THE NEIGHBORHOOD ASSOCIATION, INC. NOTICE OF FILING EXHIBITS FOR HEARING ON PRELIMINARY INJUNCTION	Maria T. Hodge On Behalf of THE NEIGHBORHOOD ASSOCIATION, INC.
111	11-18-2021 12:11 PM	Response - Opposition Received	Official		PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
112	11-18-2021 12:12 PM	Response - Opposition Received	Official		MEMORANDUM IN OPPOSITION TO MOTION TO DISSOLVE OR MODIFY TEMPORARY RESTRAINING ORDER	Maria T. Hodge On Behalf of THE NEIGHBORHOOD ASSOCIATION, INC.
110	11-16-2021 12:15 PM	Hearing - Record Of Proceeding	Official		Record Of Proceeding T. R. O. Hearing.	
109	11-15-2021 08:11 PM	Motion - Motion Received	Official		Motion Received	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
108	11-15-2021 08:11 PM	Notice - Proposed Order	Official		Proposed Order	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM

**Superior Court of the Virgin Islands  
Docket Sheet**

<b>Case #</b>	ST-2018-CV-00768	<b>Judge</b>	Hon. Renee Gumbs Carty
<b>Case Title</b>	Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.	<b>Case Type</b>	Civil - Real Property - Declaratory Judgment

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
						OWNERS ASSOCIATION, INC.
107	11-12-2021 05:39 PM	Notice - Notice of Entry of Official Judgment/Order			Notice of Entry of Judgment/Order	
106	11-12-2021 05:39 PM	Order - Order Signed	Official		Two (2) Orders Signed by Judge Renee Gumbs Carty.	
105	11-12-2021 04:18 PM	Notice - Notice of Filing	Official		Notice of Filing	
104	11-12-2021 04:12 PM	Motion - Motion For Temporary Restraining Order Received	Official		MEMORANDUM IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION	Maria T. Hodge On Behalf of THE NEIGHBORHOOD ASSOCIATION, INC.
103	11-12-2021 03:12 PM	Motion - Motion For Temporary Restraining Order Received	Official		MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION	Maria T. Hodge On Behalf of THE NEIGHBORHOOD ASSOCIATION, INC.
102	07-13-2021 01:11 PM	Notice - Notice of Appearance	Official		NOTICE OF APPEARANCE OF DAVID F. WENTZEL, ESQ. FOR PLAINTIF	
101	03-24-2021 07:44 AM	Response - Response to Opposition	Official		Defendant's Reply to Plaintiff's Opposition to Motion for Sanctions	THE NEIGHBORHOOD ASSOCIATION, INC. Maria Tankenson Hodge, Esq.
100	03-11-2021 09:17 AM	Response - Opposition Received	Official		PLAINTIFF'S OPPOSITION TO GREAT BAY DEFENDANT'S MOTION FOR SANCTIONS	OWNERS ASSOCIATION, INC. W. MARK WILCZYNSKI, ESQUIRE
99	02-21-2021 12:45 PM	Response - Reply	Official		PLAINTIFF GBCOA'S REPLY IN SUPPORT OF EMERGENCY MOTION FOR STATUS CONFERENCE AND TO MODIFY SCHEDULING ORDER	W. MARK WILCZYNSKI, ESQUIRE
98	02-20-2021 03:04 PM	Motion - Motion Received	Official		Motion Received	
97	02-20-2021 03:03 PM	Motion - Memorandum Of Law Received	Official		DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION FOR SANCTIONS AGAINST PLAINTIFF UNDER VI RULES OF CIVIL PROCEDURE 37(b)(2)(A)	
96	02-13-2021 12:37 PM	Response - Objection	Official		DEFENDANT'S OBJECTIONS	Maria T. Hodge On

**Superior Court of the Virgin Islands  
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<b>Case #</b>	ST-2018-CV-00768	<b>Judge</b>	Hon. Renee Gumbs Carty
<b>Case Title</b>	Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.	<b>Case Type</b>	Civil - Real Property - Declaratory Judgment

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
		Received			TO PLAINTIFF'S "EMERGENCY MOTION" FOR STATUS CONFERENCE AND TO MODIFY SCHEDULING ORDER	Behalf of THE NEIGHBORHOOD ASSOCIATION, INC.
95	02-11-2021 04:17 PM	Motion - Emergency Motion	Official		PLAINTIFF GBCOA'S EMERGENCY MOTION FOR STATUS CONFERENCE AND TO MODIFY SCHEDULING ORDER	W. MARK WILCZYNSKI, ESQUIRE
94	02-10-2021 07:17 PM	Response - Response	Official		DEFENDANT'S RESPONSE TO PLAINTIFF'S NOTICE OF COMPLIANCE WITH COURT ORDER	Maria T. Hodge On Behalf of THE NEIGHBORHOOD ASSOCIATION, INC.
93	02-06-2021 04:33 PM	Notice - Notice of Compliance with Court's Order	Official		PLAINTIFF'S NOTICE OF COMPLIANCE WITH THE COURT'S DECEMBER 22, 2020 ORDER	
92	02-06-2021 04:12 PM	Notice - Notice Of Service	Official		PLAINTIFF'S NOTICE OF SERVICE OF SECOND SUPPLEMENTAL RESPONSES TO DEFENDANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS	W. MARK WILCZYNSKI, ESQUIRE
91	01-27-2021 09:21 AM	Notice - Notice Of Service	Official		PLAINTIFF'S NOTICE OF SERVICE OF AMENDED FIRST SUPPLEMENTAL RESPONSES TO DEFENDANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
90	01-26-2021 03:55 PM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	
89	01-26-2021 01:43 PM	Notice - Notice Of Service	Official		PLAINTIFF'S NOTICE OF SERVICE OF FIRST SUPPLEMENTAL RESPONSES TO DEFENDANT'S FIRST SET OF INTERROGATORIES AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
88	01-25-2021 03:54 PM	Order - Order Signed	Official		Order Signed by Judge Renee Gumbs Carty	
87	01-22-2021 11:29 AM	Notice - Notice of Filing	Official		JOINT STIPULATION FOR ENTRY OF PROTECTIVE ORDER FOR PRODUCTION	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY

**Superior Court of the Virgin Islands  
Docket Sheet**

<b>Case #</b>	ST-2018-CV-00768	<b>Judge</b>	Hon. Renee Gumbs Carty
<b>Case Title</b>	Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.	<b>Case Type</b>	Civil - Real Property - Declaratory Judgment

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
					OF CONFIDENTIAL INFORMATION	CONDOMINIUM OWNERS ASSOCIATION, INC. Maria T. Hodge On Behalf of THE NEIGHBORHOOD ASSOCIATION, INC.
86	12-29-2020 03:47 PM	Response - Opposition Received	Official		DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR STATUS CONFERENCE	
85	12-29-2020 03:19 PM	Response - Opposition Received	Official		DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR STATUS CONFERENCE	
84	12-28-2020 10:23 AM	Motion - Motion Received	Official		PLAINTIFF GBCOA'S SECOND MOTION FOR STATUS CONFERENCE	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
83	12-23-2020 10:15 AM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	
82	12-22-2020 04:47 PM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	
81	12-22-2020 04:46 PM	Order - Order Signed	Official		Order Signed by Judge Renee Gumbs Carty.	
80	12-22-2020 10:10 AM	Order - Order Signed	Official		Order Signed by Judge Renee Gumbs Carty	
79	12-22-2020 08:32 AM	Notice - Notice to the Court	Official		REQUEST FOR RULING ON PENDING MOTION TO COMPEL PLAINTIFF TO RESPOND TO DEFENDANT'S WRITTEN DISCOVERY	
78	12-11-2020 10:58 AM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	
77	12-10-2020 10:56 AM	Order - Order Signed	Official		Order Signed by Judge Renee Gumbs Carty.	
76	09-28-2020 01:52 PM	Notice - Notice of Appearance	Official		Notice of Appearance	
75	08-11-2020 02:58 PM	Hearing - Record Of Proceeding	Official		Record Of Proceeding Motion Hearing.	
74	06-30-2020 02:19 PM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	
73	06-30-2020 02:05 PM	Order - Order	Official		Order signed by Judge	

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<b>Case #</b>	ST-2018-CV-00768	<b>Judge</b>	Hon. Renee Gumbs Carty
<b>Case Title</b>	Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.	<b>Case Type</b>	Civil - Real Property - Declaratory Judgment

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
					Renee Gumbs Carty.	
72	06-10-2020 09:32 AM	Notice - Notice of Filing	Official		Defendant's notice regarding counsel's availability for rescheduling oral argument received	
71	06-08-2020 09:54 AM	Notice - Notice of Filing	Official		Defendant's Notice Regarding Counsel's Availability for Rescheduled Oral Argument Received.	
70	06-05-2020 11:43 AM	Motion - Motion Received	Official		PLAINTIFF GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.'S MOTION TO RESCHEDULE ORAL ARGUMENT ON MOTION TO DISQUALIFY WITH A PROPOSED ORDER ATTACHED	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
69	05-22-2020 10:15 AM	Service - Letter Mailed To Party	Official		Letter Mailed To Party *	
68	05-21-2020 01:12 PM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of First Amended Scheduling Order	
67	05-20-2020 11:36 AM	Order - Amended Order	Official		First Amended Scheduling Order Signed	Hon. Denise M. Francois
66	04-02-2020 08:08 AM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	
65	04-02-2020 08:03 AM	Order - Order	Official		Order Signed By Judge Renee Gumbs Carty	
64	04-01-2020 11:21 AM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	
63	03-20-2020 11:14 AM	Order - Order	Official		Order signed by Judge Renee Gums Carty.	
62	03-10-2020 02:41 PM	Notice - Notice to the Court	Official		Notice to the Court of filing emials under seal as exhibit B to defendant's memorandum in opposition to motion to disqualify counsel received.	
61	03-05-2020 09:51 AM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	
60	03-05-2020 09:47 AM	Order - Order	Official		Order signed by Judge Renee Gumbs Carty.	
59	03-03-2020 03:07 PM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	
58	03-03-2020 03:04 PM	Order - Order	Official		Order signed by Judge Renee Gumbs Carty. IT IS HEREBY ORDERED that the	

**Superior Court of the Virgin Islands  
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<b>Case #</b>	ST-2018-CV-00768	<b>Judge</b>	Hon. Renee Gumbs Carty
<b>Case Title</b>	Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.	<b>Case Type</b>	Civil - Real Property - Declaratory Judgment

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
					motion be and the same is hereby granted, and defendant may attach to its memorandum in response to the motion for disqualification, copies of the referenced emails between attorney and clients, to be designated as exhibit, but file under seal.	
57	02-21-2020 05:56 PM	Notice - Supplemental Filing	Official		PLAINTIFF GBCOA'S SUPPLEMENT TO MOTION FOR STATUS CONFERENCE AND NOTICE OF AVAILABILITY TO ATTEND CONFERENCE FILED BY	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
56	02-18-2020 12:52 PM	Motion - Reply Received	Official		Defendant's supplemental response to plaintiff's motion for status conference received.	
55	02-10-2020 12:00 AM	Notice - Mediation Report	Official		MEDIATION REPORT RECEIVED	
54	01-29-2020 12:00 AM	Motion - Reply Received	Official		PLAINTIFF GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.'S REPLY IN SUPPORT OF MOTION TO CONSOLIDATE RECEIVED.	
53	01-15-2020 12:00 AM	Motion - Motion Received	Official		DEFENDANT'S OBJECTION TO PLAINTIFF'S MOTION FOR RECONSIDERATION, RECEIVED.	
52	12-23-2019 12:00 AM	Motion - Motion To Consolidate Received	Official		PLANTIFF GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.'S MOTION TO, CONSOLIDATE., FILED BY W. MARK WILCZYNSKI, ESQ., WITH PROPOSED ORDER ATTACHED.	
51	12-06-2019 12:00 AM	Case Initiation - Declaration	Official		DECLARATION OF MARIA TANKENSON HODGE RECEIVED	
50	12-06-2019 12:00 AM	Case Initiation - Declaration	Official		DECLARATION OF SALVATORE CUTRONA RECEIVED	
49	12-06-2019 12:00 AM	Motion - Motion Received	Official		DEFENDANT'S OBJECTION	



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<b>Case #</b>	ST-2018-CV-00768	<b>Judge</b>	Hon. Renee Gumbs Carty
<b>Case Title</b>	Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.	<b>Case Type</b>	Civil - Real Property - Declaratory Judgment

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
					TO PLAINTIFF'S MOTION FOR PARTIAL, SUMMARY JUDGEMENT AND REQUEST TO DENY OR DEFER DECISION ON, PLAINTIFF'S MOTION UNDER VI RULE CIVIL PROCEDURE 56 (DO RECIEVED, FILED BY W. MARK WILCZYNSKI, ESQ. WITH PROPOSED	
48	11-21-2019 12:00 AM	Motion - Motion Received	Official		PLAINTIFF GBCOA'S REPLY IN SUPPORT OF MOTION FOR STATUS CONFERENCE, RECEIVED.	
47	11-19-2019 12:00 AM	Motion - Reply Received	Official		DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR STATUS CONFERENCE, RECEIVED.	
46	11-15-2019 12:00 AM	Motion - Motion Received	Official		PLAINTIFF GBCOA'S MOTION FOR STTUS CONFERENCE RECEIVED FROM W.MARK, WILCZYNSKI, ESQUIRE..	
45	11-12-2019 12:00 AM	Notice - Notice	Official		PLAINTIFF'S NOTICE OF SERVICE OF FIRST SUPPLEMENTAL RULE 26, DISCOVERY DISCLOSURES FILED BY W. MARK WILCZYNSKI, ESQUIRE.	
44	11-12-2019 12:00 AM	Notice - Notice Of Filing Received	Official		PLAINTIFF'S NOTICE OF FILING CORRECTED EXHIBITS TO MOTION FOR, PARTIAL SUMMARY JUDGMENT, RECEIVED.	
43	11-08-2019 12:00 AM	Notice - Notice To The Court Received	Official		THIRD PARTY DEFENDANT, MARSHALL CONSTRUCTION INC.'S NOTICE OF, SERVING IT'S FIRST SET OF INTERROGATORIES TO PLAINTIFF, COWPET BAY, EAST CONDOMINIUM OWNERS ASSOCIATION, SUBMITTED BY JENNIFER BROOKS, ESQ.	
42	11-08-2019 12:00 AM	Notice - Notice To The Court Received	Official		THIRD PARTY DEFENDANT, MARSHALL CONSTRUCTION INC.'S NOTICE OF, SERVING	

**Superior Court of the Virgin Islands  
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<b>Case #</b>	ST-2018-CV-00768	<b>Judge</b>	Hon. Renee Gumbs Carty
<b>Case Title</b>	Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.	<b>Case Type</b>	Civil - Real Property - Declaratory Judgment

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
					IT'S FIRST SET OF INTERROGATORIES TO PLAINTIFF, COWPET BAY, EAST CONDOMINIUM OWNERS ASSOCIATION, SUBMITTED BY JENNIFER BROOKS, ESQ.	
41	11-07-2019 12:00 AM	Motion - Motion Received	Official		GREAT BAY CONDOMINIUM OWNERS ASSOCIATION'S MOTION FOR PARTIAL, SUMMARY JUDGMENT RECEIVED.	
40	10-30-2019 12:00 AM	Motion - Reply Received	Official		PLAINTIFF GBCOA'S REPLY IN SUPPORT OF THE MOTION FOR PARTIAL SUMMARY, JUDGMENT RECEIVED.	
39	08-23-2019 12:00 AM	Notice - Notice	Official		PLAINTIFF GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.'S NOTICE, OF COUNSEL'S AVAILABILITY FOR HEARING FILED BY W. MARK WILCZYNSKI,, ESQUIRE.	
38	08-23-2019 12:00 AM	Notice - Notice	Official		DEFENDANT'S NOTICE REGARDING COUNSEL'S AVAILABILITY FOR HEARING,, RECEIVED.	
37	08-22-2019 12:00 AM	Motion - Reply Received	Official		PLAINTIFF GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.'S REPLY IN, SUPPORT OF MOTION TO DISQUALIFY COUNSEL RECEIVED.	
36	08-02-2019 12:00 AM	Case Initiation - Memorandum	Official		DEFENDANT'S MEMORANDUM IN OPPOSITION TO MOTION TO DISQUALIFY COUNSEL, RECEIVED.	
35	08-02-2019 12:00 AM	Motion - Reply Received	Official		DEFENDANT'S REPLY TO PLAINTIFFS OPPOSITION TO DEFENDANT'S MOTION, TO COMPEL RECEIVED.	
34	07-29-2019 12:00 AM	Motion - Motion Received	Official		MOTION FOR LEAVE TO FILE CONFIDENTIAL EMAILS UNDER SEAL FILED BY, MARIA TANKENSON HODGE,	

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<b>Case #</b>	ST-2018-CV-00768	<b>Judge</b>	Hon. Renee Gumbs Carty
<b>Case Title</b>	Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.	<b>Case Type</b>	Civil - Real Property - Declaratory Judgment

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
					ESQUIRE	
33	07-23-2019 12:00 AM	Motion - Motion Received	Official		PLAINTIFF GBCOA'S MOTION TO DISQUALIFY COUNSEL RECEIVED.	
32	07-23-2019 12:00 AM	Case Initiation - Opposition To Motion Received	Official		PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO COMPEL, FILED BY, W. MARK WILCZYNSKI, ESQUIRE PROPOSED ORDER ATTACHED.	
31	07-05-2019 12:00 AM	Case Initiation - Memorandum	Official		DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION TO COMPEL INTERROGATORY, ANSWERS AND TO COMPEL PRODUCTION OF RESPONSIVE DOCUMENTS RECEIVED.	
30	07-05-2019 12:00 AM	Motion - Motion Received	Official		MOTION TO COMPEL PLAINTIFF TO RESPOND TO WRITTEN DISCOVERY, FILED BY, MARIA TANKENSON HODGE, ESQUIRE	
29	07-05-2019 12:00 AM	Case Initiation - Miscellaneous	Official		CERTIFICATE OF COUNSEL MARIA TANKENSON HODGE RECEIVED.	
28	07-02-2019 12:00 AM	Motion - Reply Received	Official		PLAINTIFF GBCOA'S REPLY IN SUPPORT OF MOTION TO MODIFY SCHEDULING, PLAN ORDER FILED BY W. MARK WILCZYNSKI, ESQ. WITH PROPOSED ORDER, ATTACHED	
27	06-20-2019 12:00 AM	Response - Opposition Received	Official		OPPOSITION TO MOTION TO AMEND SCHEDULING ORDER ATTACHED WITH, EXHIBITS FILED BY MARIA TANKENSON HODGE, ESQ.	
26	06-19-2019 12:00 AM	Motion - Motion Received	Official		PLAINTIFF GBCOA'S MOTION TO MODIFY SCHEDULING ORDER FILED BY, W. MARK WILCZYNSKI, ESQ. WITH MODIFIED SCHEDULING PLAN ATTACHED	
25	05-28-2019 12:00 AM	Notice - Notice Of Filing Received	Official		DEFENDANT'S OBJECTION TO PLAINTIFF'S UNTIMELY	

**Superior Court of the Virgin Islands  
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<b>Case #</b>	ST-2018-CV-00768	<b>Judge</b>	Hon. Renee Gumbs Carty
<b>Case Title</b>	Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.	<b>Case Type</b>	Civil - Real Property - Declaratory Judgment

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
24	05-06-2019 12:00 AM	Notice - Notice Of Service	Official		INTERROGATORIES AND, REQUESTS FOR PRODUCTION OF DOCUMENTS RECEIVED. PLAINTIFF'S NOTICE OF SERVICE OF RESPONSE TO DEFENDANT'S FIRST SET, OF INTERROGATORIES FILED W. MARK WILCZYNSKI, ESQUIRE...	
23	05-06-2019 12:00 AM	Notice - Notice Of Service	Official		PLAINTIFF'S NOTICE OF SERVICE OF RESPONSE TO DEFENDANT'S FIRST REQUEST, FOR PRODUCTION OF DOCUMENTS FILED BY W. MARK WILCZYNSKI,	
22	04-30-2019 12:00 AM	Notice - Notice Of Service	Official		PLAINTIFF'S NOTICE OF SERVICE OF FIRST SET OF DISCOVERY REQUESTS TO, DEFENDANT FILED BY W. MARK WILCZYNSKI, ESQUIRE..	
21	04-02-2019 12:00 AM	Notice - Notice Of Service	Official		NOTICE OF SERVICE OF DEFENDANTS' FIRST REQUEST FOR PRODUCTION OF, DOCUMENTS TO PLAINTIFF FILED BY MARIA TANKENSON HODGE, ESQ.	
20	04-02-2019 12:00 AM	Notice - Notice Of Interrogatories Received	Official		NOTICE OF SERVICE OF DEFENDANTS' FIRST SET OF INTERROGATORIES TO, PLAINTIFF FILED BY MARIA TANKENSON HODGE, ESQ.	
19	03-01-2019 12:00 AM	Notice - Notice Of Service	Official		PLAINTIFF'S NOTICE OF SERVICE OF RULE 26 INITIAL DISCOVERY, DISCLOSURES FILED BY W. MARK WILCZYNSKI, ESQUIRE	
18	02-28-2019 12:00 AM	Notice - Notice Of Service Of Discovery Received	Official		NOTICE OF SERVICE OF RULE 26(a) INITIAL DISCLOSURE STATEMENT OF, DEFENDANT, THE NEIGHBORHOOD ASSOCIATION, INC., RECEIVED.	
17	02-26-2019 12:00 AM	Action - File Returned To	Official		FILE RETURNED TO THE	

**Superior Court of the Virgin Islands  
Docket Sheet**

<b>Case #</b>	ST-2018-CV-00768	<b>Judge</b>	Hon. Renee Gumbs Carty
<b>Case Title</b>	Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.	<b>Case Type</b>	Civil - Real Property - Declaratory Judgment

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
		Clerk's Office			CLERK'S OFFICE	
16	02-26-2019 12:00 AM	Notice - Notice Of Entry	Official		NOTICE OF ENTRY OF ORDER, 02/25/2019, W. MARK WILCZYNSKI, ESQUIRE, MARIA TANKENSON HODGE, ESQUIRE	
15	02-25-2019 12:00 AM	Order - Order Signed	Official		ORDER SIGNED BY JUDGE RENEE GUMBS CARTY.	
14	02-14-2019 12:00 AM	Notice - Notice Of Filing Received	Official		NOTICE OF FILING RECEIVED FILED BY CHARLES S. RUSSELL, JR., ESQUIRE	
13	02-12-2019 12:00 AM	Notice - Discovery Received	Official		JOINT DISCOVERY AND SCHEDULING PLAN FILED BY W. MARK WILCZYNSKI,, ESQ. AND MARIA TANKERSON HIDGE, ESQ.	
12	01-08-2019 12:00 AM	Answer - Answer	Official		ANSWER RECEIVED	
11	12-20-2018 12:00 AM	Service - Return Of Service	Official		RETURN OF SERVICE FOR SUMMONS RETURNED SERVED ON LINDA QUETEL, AFFIDAVIT OF SERVICE ATTACHED.	
10	12-10-2018 12:00 AM	Action - File Forwarded To Judge's Chambers	Official		FILE FORWARDED TO JUDGE'S CHAMBER	
9	12-10-2018 12:00 AM	Case Initiation - Case File Received By Jury Trial Division	Official		Case File Received By Jury Trial Division	
8	12-10-2018 12:00 AM	Financial - Fee Received	Official		FEE RECEIVED, RECEIPT # - 00178941	
7	12-06-2018 12:00 AM	Case Initiation - Case Sent From Non-Jury To Jury	Official		CASE SENT FROM NON-JURY TO JURY	
6	12-06-2018 12:00 AM	Action - Direct Judge Assignment	Official		DIRECT JUDGE ASSIGNMENT Hon. Renee Gumbs Carty RGC	
5	12-06-2018 12:00 AM	Service - Summons Issued	Official		21 DAY SUMMONS ISSUED TO THE NEIGHBORHOOD ASSOCIATION, INC.	
4	12-06-2018 12:00 AM	Initiating Document - Docket Letter Processed	Official		DOCKETING LETTER AND NOTICE OF JUDGE ASSIGNMENT ISSUED TO THE CLERK	
3	12-05-2018 12:00 AM	Initiating Document - Civil Complaint	Official		Converted Claims	
2	12-05-2018 12:00 AM	Financial - Filing Fee Assess	Official		FILING FEE ASSESSED	

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Docket Sheet**

<b>Case #</b>	ST-2018-CV-00768	<b>Judge</b>	Hon. Renee Gumbs Carty
<b>Case Title</b>	Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.	<b>Case Type</b>	Civil - Real Property - Declaratory Judgment

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
1	12-05-2018 12:00 AM	Initiating Document - Complaint	Official		COMPLAINT AND SUMMONS FILED BY W. MARK WILCZYNSKI, ESQ., CASE INFORMATION AND LITIGANT DATA FORM FILED BY W. MARK WILCZYNSKI,, ESQ.	

CERTIFIED TO BE A TRUE COPY

This 20<sup>th</sup> day of March 20 22

TAMARA CHARLES  
CLERK OF THE COURT

By Tamara Charles Court Clerk III

**FILED**

November 12, 2021 05:39 PM  
ST-2018-CV-00768  
TAMARA CHARLES  
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.,	)	
	)	
Plaintiff,	)	CASE NO. ST-18-CV-768
	)	
v.	)	ACTION FOR DECLARATORY
	)	JUDGMENT, TO CANCEL DEED
THE NEIGHBORHOOD ASSOCIATION, INC.,	)	AND TO QUIET TITLE
	)	
Defendant.	)	

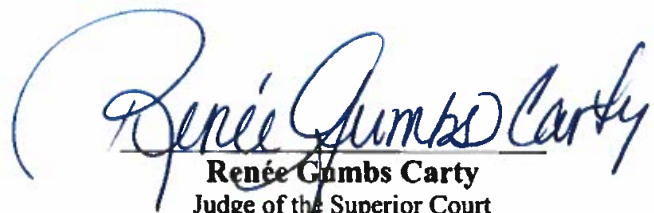
**ORDER**

AND NOW, it is hereby

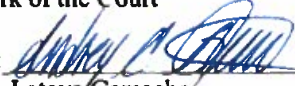
**ORDERED** that this matter shall come for a status conference on Tuesday, November 16, 2021, at 10:45 a.m., via Zoom; and it is further


**ORDERED** that a copy of this Order shall be directed to W. Mark Wilczynski, Esquire and Maria Tankenson Hodge, Esquire.

Dated: November 12, 2021

  
**Renee Gumbs Carty**  
 Judge of the Superior Court  
 of the Virgin Islands

ATTEST:  
Tamara Charles  
Clerk of the Court

By:   
 for Latoya Camacho  
 Court Clerk Supervisor 11/12/2021

CERTIFIED TO BE A TRUE COPY  
 This 26<sup>th</sup> day of March 20 22  
 TAMARA CHARLES  
 CLERK OF THE COURT  
 By:  Court Clerk III





which would be the responsibility of the Owner of CU-1, has not yet been determined by this Court, and so that NA's members would effectively be coerced or compelled by this disputed assessment to make payments they do not owe, upon threat of loss of use of their residences while this case is pending, and the Court therefore concluding that Great Bay has initiated an unlawful and improper campaign to assess the individual members of NA, with years of retroactive dues assessments, purporting to rely upon a dubious interpretation of the governing condominium documents that require owners of residential units to pay such charges for this separate commercial unit, even as Great Bay has present before this Court the undecided claims in its suit seeking a declaration that it is not the owner of the commercial unit in question, despite having title of record thereto in the records of the Office of the Recorder of Deeds. In pursuit of its evasion of the authority of the Court to decide that claim, Great Bay has suddenly issued invoices to the individual members of NA who own separate interests in condominiums at the property, with a demand that they pay these disputed and apparently unlawful claims by November 22, 2021, or face eviction or lockout from their residences. This imminent threat of self-help by the Plaintiff constitutes a sufficient showing of irreparable harm to NA and its members, warranting issuance of this temporary restraining order, to preserve the status quo and protect NA and its owners from the threatened discriminatory and presumptive illegal actions now being taken. These threats are currently outstanding, and despite demand, have not been withdrawn, as evidenced by the affidavit of NA.

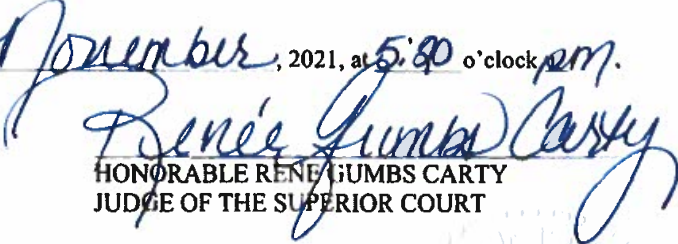
Accordingly, the Court finds that Defendant has demonstrated that (1) there is a reasonable probability of eventual success in this litigation and on this present threatened illegal conduct; (2) if injunctive relief is denied, NA and its members will suffer irreparable harm; (3) the harm to Great Bay is not outweighed by the harm to NA and its members if the requested relief is granted;

and (4) the public interest favors injunctive relief in this case.

NOW, THEREFORE, IT IS HEREBY ORDERED that Great Bay, and all persons acting in concert with Great Bay, be and are hereby ordered to rescind the invoices to NA members for dues and common charges for CU-1, and from taking any action to impose a lien related thereto, or from taking any steps to Lock Out or otherwise impair, restrain or obstruct in any way the use by NA's members or their residences, condominiums, or the common areas at the Ritz-Carlton, or other membership rights and amenities, for a period of fourteen (14) days from the date of this order, commencing on the date and hour set forth below, and it is further

ORDERED that this matter shall come on for hearing upon NA's motion for a preliminary injunction to continue the order here entered on November 19, 2021, at 10:00 AM, in the Superior Court of the Virgin Islands, to be conducted by Zoom with an invitation to issue by the Clerk of the Court to the parties and their witnesses.

SO ORDERED this 19<sup>th</sup> day of November, 2021, at 5:30 o'clock pm.

  
HONORABLE RENEE GUMBS CARTY  
JUDGE OF THE SUPERIOR COURT

ATTEST:

Tamara Charles  
Clerk of the Court

CERTIFIED TO BE A TRUE COPY  
This 26<sup>th</sup> day of March 2022  
TAMARA CHARLES  
CLERK OF THE COURT  
By Paula Clanton Court Clerk III

By:   
for Latoya Camacho  
Court Clerk Supervisor 11 1 12 2021.

**FILED**

November 12, 2021 05:39 PM  
ST-2018-CV-00768  
TAMARA CHARLES  
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS**  
District of St. Thomas/St. John

**GREAT BAY CONDOMINIUM OWNERS  
ASSOCIATION, INC.,**

**Plaintiff**

v.

**THE NEIGHBORHOOD ASSOCIATION,  
INC.,**

**Defendant.**

Case Number: **ST-2018-CV-00768**  
Action: **Declaratory Judgment**

**NOTICE of ENTRY  
of  
Two (2) Orders**

To: W. Mark Wilczynski, Esquire  
David F. Wentzel, Esquire

Maria T. Hodge, Esquire

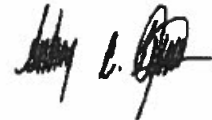
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Please take notice that on November 12, 2021  
Two (2) \_\_\_\_\_ Orders  
dated November 12, 2021 were entered  
by the Clerk in the above-titled matter.

Dated: November 12, 2021

\_\_\_\_\_  
**Tamara Charles**  
Clerk of the Court

By:



\_\_\_\_\_  
**Audrey C. Brin**  
Court Clerk II

**FILED**

December 15, 2021 10:41 AM  
ST-2018-CV-00768  
TAMARA CHARLES  
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

\*\*\*\*\*

GREAT BAY CONDOMINIUM OWNERS	)	
ASSOCIATION, INC.,	)	
	)	CASE NO. ST-18-CV-768
Plaintiff,	)	
	)	
v.	)	ACTION FOR DECLARATORY
	)	JUDGMENT, TO CANCEL DEED
THE NEIGHBORHOOD ASSOCIATION, INC.,	)	AND TO QUIET TITLE
	)	
Defendant.	)	
	)	

---

**ORDER EXTENDING TEMPORARY RESTRAINING ORDER**

**THIS MATTER** having come on for a hearing on November 19, December 8, 9 and 13, 2021, upon the motion of the Defendant, The Neighborhood Association, Inc. ("NA"), for a preliminary injunction ("the Motion") against Plaintiff Great Bay Condominium Owners Association, Inc. ("Great Bay"), under the authority of V.I.R.Civ. P. 65(b), the Court having previously entered a temporary restraining order on November 12, 2021, the Court having heard the arguments of the parties, and having received evidence on the matter, and now having concluded that the preliminary injunction is appropriate and should be granted, and the Court being duly satisfied in the premises, it is hereby

**ORDERED** that the Temporary Restraining Order previously entered, shall be and is hereby **EXTENDED** for good cause until the issuance of an Order of Preliminary Injunction; and it is further

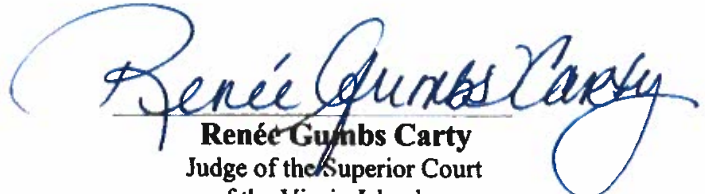
Great Bay Condominium Owners Association Inc.  
v. The Neighborhood Association, Inc.  
Case No. ST-18-CV-768  
Order Extending Temporary Restraining Order  
Page 2

**ORDERED** that having heard the preliminary arguments on the issue of security, the parties shall both file their briefs not later than **Friday, December 31, 2021, at 12:00 p.m.**; and it is further

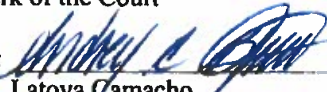
**ORDERED** that the parties shall meet and confer and submit a proposed scheduling order by **Friday, January 7, 2022**; and it is further

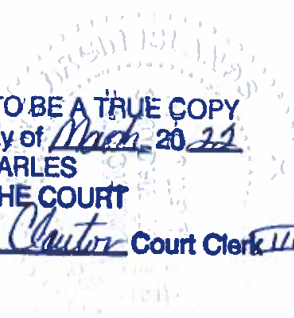
**ORDERED** that a copy of this Order shall be directed to W. Mark Wilczynski, Esquire, David Wentzel, Esquire, and Maria Tankenson Hodge, Esquire.

Dated: December 15, 2021

  
**Renée Gumbs Carty**  
Judge of the Superior Court  
of the Virgin Islands

**ATTEST:**  
Tamara Charles  
Clerk of the Court

By:   
for Latoya Gamacho  
Court Clerk Supervisor 12/15/2021

  
CERTIFIED TO BE A TRUE COPY  
This 21<sup>st</sup> day of March, 2022  
TAMARA CHARLES  
CLERK OF THE COURT  
By Paula Clouton Court Clerk III

**FILED**

December 16, 2021 10:43 AM  
ST-2018-CV-00768  
TAMARA CHARLES  
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS**  
District of St. Thomas/St. John

**GREAT BAY CONDOMINIUM OWNERS  
ASSOCIATION, INC.,**

**Plaintiff**

v.

**THE NEIGHBORHOOD ASSOCIATION,  
INC.,**

**Defendant.**

Case Number: **ST-2018-CV-00768**  
Action: **Declaratory Judgment**

**NOTICE of ENTRY**  
of  
**ORDER EXTENDING TEMPORARY RESTRAINING**  
**ORDER**

To: W. Mark Wilczynski, Esquire  
David F. Wentzel, Esquire

Maria T. Hodge, Esquire

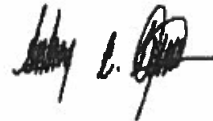
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Please take notice that on December 16, 2021  
a(n) ORDER EXTENDING TEMPORARY RESTRAINING ORDER  
dated December 15, 2021 was entered  
by the Clerk in the above-titled matter.

Dated: December 16, 2021

Tamara Charles  
Clerk of the Court

By:



Audrey C. Brin  
Court Clerk II

IN THE SUPERIOR COURT  
OF THE VIRGIN ISLANDS

**FILED**

November 19, 2021 04:25 PM

ST-2018-CV-00768

TAMARA CHARLES  
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

_____	)	
GREAT BAY CONDOMINIUM OWNERS	)	
ASSOCIATION, INC.	)	CIVIL NO. ST-18-CV-768
	)	
PLAINTIFF,	)	ACTION FOR DECLARATORY
V.	)	JUDGMENT, TO CANCEL DEED
	)	AND TO QUIET TITLE
THE NEIGHBORHOOD ASSOCIATION, INC.	)	
	)	
DEFENDANT.	_____	

**ORDER EXTENDING TEMPORARY RESTRAINING ORDER**

THIS MATTER HAVING COME ON FOR HEARING on November 19, 2021, upon the motion of the Defendant, The Neighborhood Association, Inc. ("NA"), for a preliminary injunction ("the Motion") against Plaintiff, Great Bay Condominium Owners Association, Inc. ("Great Bay"), under the authority of V.I.R.Civ.P. 65(b), the Court having previously entered a temporary restraining order on November 12, 2021, and having fixed November 19 for a hearing on the Motion, and the Court having heard the arguments of the parties, and having received some evidence on the matter, but having concluded that an adjournment is required to complete the taking of necessary testimony, and the Court being duly satisfied in the premises, NOW, THEREFORE,

IT IS HEREBY ORDERED that the Plaintiff's motion to dissolve the temporary restraining order is denied, and the Court concludes that it has jurisdiction to hear and proceed with the Motion, and it is

FURTHER ORDERED that having heard the parties on the issue of security, no bond will be required of NA in connection herewith, as the Court concludes that the Plaintiff will not incur

A.001551

Great Bay Condominium Owners Ass'n, Inc. v. The Neighborhood Ass'n, Inc.  
Case No. ST-18-CV-768  
Order

any material costs or damages as a result of the TRO, for reasons discussed at the hearing, if it is later determined to have been wrongfully enjoined, and it is

FURTHER ORDERED that the matter is scheduled for continued hearing on the Motion on December 9, 2021, at 12:00 p.m., via Zoom, with an invitation to issue by the Clerk of the Court to the parties and their witnesses, the hearing to continue thereafter on December 13, 2021, commencing at 1 p.m. (AST), with the time period between 2 p.m. and 4 p.m. reserved for the testimony of Plaintiff's witness, Abbey Chung, and it is

FURTHER ORDERED that the Temporary Restraining Order previously entered, shall be and is hereby extended, for good cause, to the conclusion of the hearing on the Motion;

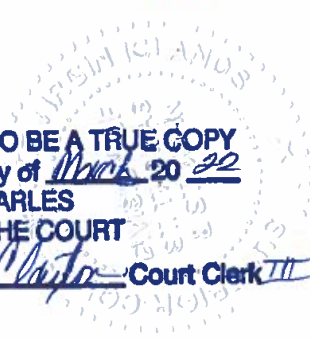

FURTHER ORDERED that a copy of this Order shall be directed to W. Mark Wilczynski, Esquire, David Wentzel, Esquire, and Maria Tankenson Hodge, Esquire.

SO ORDERED this 19<sup>th</sup> day of November, 2021, at 3:55 o'clock pm.

  
HONORABLE RENEE GUMBS CARTY  
JUDGE OF THE SUPERIOR COURT

ATTEST:  
Tamara Charles  
Clerk of the Court

By:   
for Latoya Camacho  
Court Clerk Supervisor 11/19/2021

  
CERTIFIED TO BE A TRUE COPY  
This 20 day of March, 2022  
TAMARA CHARLES  
CLERK OF THE COURT  
By:  Court Clerk III



**FILED**

November 19, 2021 04:25 PM  
ST-2018-CV-00768  
TAMARA CHARLES  
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS**  
District of St. Thomas/St. John

**GREAT BAY CONDOMINIUM OWNERS  
ASSOCIATION, INC.,**  
Plaintiff

Case Number: **ST-2018-CV-00768**  
Action: **Declaratory Judgment**

v.

**THE NEIGHBORHOOD ASSOCIATION,  
INC.,**  
Defendant.

**NOTICE of ENTRY  
of  
ORDER EXTENDING TEMPORARY RESTRAINING  
ORDER**

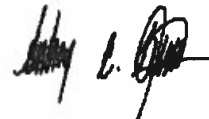
To: <u>W. Mark Wilczynski, Esquire</u> <u>David F. Wentzel, Esquire</u>       	<u>Maria T. Hodge, Esquire</u>       
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Please take notice that on November 19, 2021  
a(n) ORDER EXTENDING TEMPORARY RESTRAINING ORDER  
dated November 19, 2021 was entered  
by the Clerk in the above-titled matter.

Dated: November 19, 2021

Tamara Charles  
Clerk of the Court

By:



Audrey C. Brin  
Court Clerk II

**FILED**

January 05, 2022 04:37 PM  
ST-2018-CV-00768  
TAMARA CHARLES  
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

_____ )	
GREAT BAY CONDOMINIUM OWNERS )	
ASSOCIATION, INC., )	CIVIL NO. ST-18-CV-768
)	
PLAINTIFF, )	ACTION FOR DECLARATORY
V. )	JUDGMENT, TO CANCEL DEED
)	AND TO QUIET TITLE
THE NEIGHBORHOOD ASSOCIATION, INC., )	
)	
DEFENDANT. _____ )	

**ORDER**

THIS MATTER HAVING COME ON FOR CONSIDERATION upon the oral request of the Plaintiff, Great Bay Condominium Owners Association, Inc. ("Great Bay") for the Court to require the posting of security by the Defendant, The Neighborhood Association, Inc. ("NA"), as a condition of the Court's decision to grant the temporary restraining order entered November 12, 2021, and extended by orders of November 19 and December 15, 2021, until the Order of Preliminary Injunction is issued, and the Court having received the parties' written briefs on the matter, and having considered the evidence adduced during the hearings on the subject motion, and having previously concluded that no bond should be required in this matter as the Plaintiff would not incur any material costs or damages as result of the TRO, because their invoices to NA members already included interest and late fees, and billed for the entire amount they claimed was due.

Considering those same invoices could simply be reissued if the TRO or preliminary injunction were later to be vacated, and the same members Great Bay sought to collect from in its October 2021, invoices, would readily be billed again, with whatever additional interest or late fees

*Great Bay Condominium Owners Association Inc.*  
*v. The Neighborhood Association, Inc.*  
Case No. ST-18-CV-768  
Order

accrued and as it was shown that Great Bay was able to promptly notify the NA members the invoices were rescinded by reason of the TRO with a mass email distribution to such members, at no cost to Great Bay, it can be concluded that a significant sum of security is unnecessary. Even in light of the Omicron variant surge, Great Bay can easily re-issue updated invoices and such task is neither burdensome, nor does it create a financial hardship for Great Bay, thus it is reasonable to conclude that an email to reinstate invoices, if necessary, could be similarly sent at either no cost or minimal cost to Great Bay. Consequently, there is no exposure to damages from the extended TRO, or the Preliminary Injunction the Court intends to enter, and no material cost of compliance with either.

Accordingly, the Court concludes as per Great Bay's contractual obligations with Concord, that the minimal cost of Four Thousand, Two Hundred Thirty-Eight (\$4,238) Dollars is sufficient to protect Great Bay under the authority of V.I.R. Civ. P. 65(b). The Court being duly satisfied in the premises, it is hereby

**ORDERED** that the Plaintiff's motion to require the posting of a substantial bond for security by NA as a condition of the grant of the extended temporary restraining order, and the preliminary injunction expected to follow, is **DENIED**, in part; and it is hereby

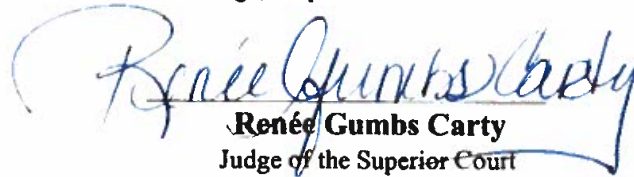
**ORDERED** that the Court concludes that the Plaintiff will not incur any significant material costs or damages as a result of the extended TRO, but will allow for the nominal bond of **Four Thousand, Two Hundred Thirty-Eight (\$4,238) Dollars** for the reasons stated above, if it is later determined to have been wrongfully enjoined; and it is further

Great Bay Condominium Owners Association Inc.  
v. The Neighborhood Association, Inc.  
Case No. ST-18-CV-768  
Order


**ORDERED** that the bond shall be posted within **Ten (10) days** of the date of this Order;  
and it is further


**ORDERED** that a copy of this Order shall be directed to W. Mark Wilczynski,  
Esquire, David Wentzel, Esquire, and Maria Tankenson Hodge, Esquire.

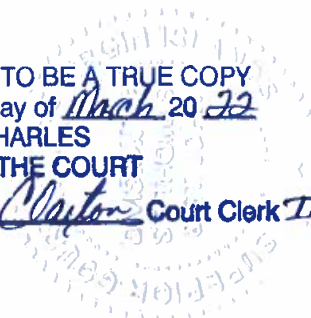
Dated: January 5, 2022

  
**Renée Gumbs Carty**  
Judge of the Superior Court  
of the Virgin Islands

**ATTEST:**  
Tamara Charles  
Clerk of the Court

By:   
Latoya Camacho  
Court Clerk Supervisor 1 / 7 / 2022

CERTIFIED TO BE A TRUE COPY  
This 20 day of March 20 22  
TAMARA CHARLES  
CLERK OF THE COURT  
By  Court Clerk III



**FILED**

January 10, 2022 04:39 PM  
ST-2018-CV-00768  
TAMARA CHARLES  
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS**  
District of St. Thomas/St. John

**GREAT BAY CONDOMINIUM OWNERS  
ASSOCIATION, INC.,**

**Plaintiff**

Case Number: **ST-2018-CV-00768**  
Action: **Declaratory Judgment**

v.

**THE NEIGHBORHOOD ASSOCIATION,  
INC.,**

**Defendant.**

**NOTICE of ENTRY  
of  
ORDER**

To: W. Mark Wilczynski, Esquire  
David F. Wentzel, Esquire

Maria T. Hodge, Esquire

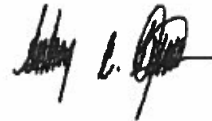
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Please take notice that on January 10, 2022  
a(n) ORDER  
dated January 5, 2022 was entered  
by the Clerk in the above-titled matter.

Dated: January 10, 2022

Tamara Charles  
Clerk of the Court

By:



Audrey C. Brin  
Court Clerk II

**FILED**

April 11, 2022 04:04 PM  
ST-2018-CV-00768  
TAMARA CHARLES  
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.,	)	CASE NO. ST-18-CV-768
	)	
Plaintiff,	)	
v.	)	ACTION FOR DECLARATORY JUDGMENT, TO CANCEL DEED AND TO QUIET TITLE
	)	
THE NEIGHBORHOOD ASSOCIATION, INC.,	)	
	)	
Defendant.	)	<u>2022 VI Super 41U</u>
_____	)	

**W. MARK WILCZYNSKI, Esq.**  
Law Office of W. Mark Wilczynski  
Palm Passage, Ste. C20-22  
St. Thomas, Virgin Islands 00804  
*Attorneys for Plaintiff*

**MARIA TANKENSON HODGE, Esq.**  
Hodge & Hodge  
1340 Taarneberg  
St. Thomas, Virgin Islands 00802  
*Attorneys for Defendant*

**DAVID F. WENTZEL, Esq.**  
Wentzel Law Offices  
77 W. Washington St., Suite 2100  
Chicago, Illinois 60602  
*Attorneys for Plaintiff*

**CARTY, RENÉE GUMBS, Judge**

**MEMORANDUM OPINION**

¶1 **THIS MATTER** came on for successive hearings on November 19, 2021, and December 8, 9, and 13, 2021, on Defendant’s, The Neighborhood Association, Inc. (“NA”), “Emergency Motion for Temporary Restraining Order and Preliminary Injunction” filed on November 12, 2021. Plaintiff, Great Bay Condominium Owners Association, Inc. (“Great Bay”), filed its “Motion to Dissolve or Modify Temporary Restraining Order” and the pertinent exhibits on November 15, 2021. Defendant filed its response on November 18, 2021. NA sought to enjoin Great Bay from demanding payment of special assessments fees incurred from 2017 to 2021 for a

restaurant and lounge on the premises of the Ritz-Carlton Hotel, St. Thomas, Virgin Islands. Under the Declaration of Condominium and its amendments, Commercial Unit-1 (hereinafter referred to as “CU-1,” the “lounge,” or “Grand Palazzo Club”), which operated as the Grand Palazzo Club, is a restaurant/lounge created for the exclusive use of NA members, who are the owners of two-bedroom suites located in the Gardenia and Heliconia Buildings. On October 22, 2021, NA members were collectively assessed over \$1 million in maintenance fees, late charges, and interest. To fully understand the nature of Defendant NA’s request for injunctive relief, the Court must first start with the underlying claims of the Complaint.

¶2 In December 2018, Great Bay filed an action against NA seeking to cancel the deed and to quiet title; and requesting declaratory judgment. On September 20, 2017,<sup>1</sup> NA conveyed a condominium deed to Great Bay for Commercial Unit-1. This deed conveyance from Salvatore M. Cutrona, Sr., NA’s President, to Abigail Chung, then-Vice-President of Great Bay, embodied the transfer of CU-1, located on the fifth floor of Building G, Gardenia, to Great Bay. Great Bay refused to accept the deed and denied any conveyance or obligations to pay the maintenance fees and expenses associated with CU-1. Great Bay has demanded that NA continue, despite the deed conveyance, to pay all expenses associated with the restaurant/lounge.

¶3 Prior to and during this action, Great Bay assessed NA for the CU-1 maintenance fees for the years 2017, 2018, and 2019.<sup>2</sup> Those amounts remained unpaid. Then on October 22, 2021, while the underlying action remains pending as to the validity of the deed and its conveyance,

---

<sup>1</sup> The Virgin Islands experienced two Category 5 storms, Hurricanes Irma and Maria, on September 6, and September 20, 2017, respectively. See National Oceanic and Atmospheric Administration and National Weather Service, “National Hurricane Center Tropical Cyclone Report: Hurricane Irma” published on September 21, 2017, at 25, and “National Hurricane Center Tropical Cyclone Report: Hurricane Maria” published February 14, 2019, at 30.

<sup>2</sup> Plaintiff’s Exhibit 13 at 2.

Great Bay disseminated invoices in excess of \$1 million levied directly against NA members for the amounts owed for the years 2017 through 2021 triggering the request for the temporary restraining order and preliminary injunction.

¶4 The Court issued the Temporary Restraining Order (“TRO”) on November 12, 2021, and held a status conference on November 16, 2021. After hearing preliminary arguments at the status conference, the Court orally denied the motion to dissolve or modify the TRO and proceeded towards a preliminary injunction hearing.

¶5 At the hearings, the Court heard the sworn testimonies of Salvatore M. Cutrona Sr., NA’s President, Marsha Leighton-Herrmann, Director of Finance for the Ritz-Carlton Club St. Thomas, Abigail Chung, President of Great Bay Condominium Owners Association, and Thomas Doyle, Treasurer of Great Bay Condominium Owners Association. For the following reasons, the Court will grant the motion for injunctive relief due to a clear showing that relief is warranted when the factors are considered and weighed.

**I. Brief factual background.**

¶6 NA sought to enjoin Great Bay from unilaterally assessing the 288 NA members for the full amount of five years of past common charges Great Bay has assessed for the commercial unit. Great Bay Condominium Owners Association consists of 1,260 residence interests. There are 80 units, each possessing 12 deeded fractional interests. This portion makes up 960 interests. In addition, there are 288 deeded fractional interests situated in two (2) buildings, Gardenia (“Building G”) and Heliconia (“Building H”). NA is comprised of the two (2) buildings, but NA owners are also members of Great Bay. Of the 288 fractional interests belonging to NA, forty-nine



percent (49%) are owned by the Ritz-Carlton and the Marriott Vacation Club Trust.<sup>3</sup> The remaining fifty-one percent (51%) are individual owners. The remaining twelve (12) interests are associated with CU-1. CU-1 was initially designated as a food and beverage service with a lounge area for the exclusive use of residence interest owners of two-bedroom suites in Buildings G and H. The suites in both buildings were constructed with galley kitchens and no dining rooms, unlike the other larger units at the Ritz-Carlton with larger kitchens and dining areas. Thus, CU-1 was created solely for the purpose of having a food and beverage service and lounge to accommodate these suite owners.

¶7 On May 10, 2002, the Ritz-Carlton, through a Declaration of Condominium, established the Great Bay Condominium Owners Association, Inc., pursuant to Chapter 33, Title 28 of the Virgin Islands Code and recorded the Declaration in the Office of the Recorder of Deeds for the District of St. Thomas/ St. John. Great Bay, a not-for-profit association, is located on the property of the Ritz-Carlton Hotel. NA is also a not-for-profit association on the premises. On the same day, the Supplementary Declaration of Condominium was also recorded and created the Residence Interests<sup>4</sup> in the Condominium. During the ensuing months, several amendments to both declarations were created to meet the needs of the interested parties. The First and Second Amendments to the Declaration became effective on July 5, 2002, and December 6, 2002, respectively. There were also First and Second Amendments to the Supplementary Declaration which became effective on December 6, 2002, and January 7, 2004, respectively.

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<sup>3</sup> See Plaintiff's Motion to Dissolve or Modify Temporary Restraining Order at 2.

<sup>4</sup> See November 19, 2021, Hearing Transcript at 16, lines 1-8 (defining the residence interests as deeded fractional interests. Since the condominiums are not full ownership, each unit has twelve (12) deeded fractional interests that provide owners twenty-one (21) days of use on a rotating basis.).

¶8 On November 15, 2005, Ritz-Carlton signed the Third Amendment to the Supplementary Declaration and the Fourth Amendment to the Declaration, which both amendments created NA and the plans to refurbish Building H which would house twelve two-bedroom suites. On June 6, 2006, with the Fifth Amendment to the Declaration, Building G was conveyed from the Ritz-Carlton hotel to the interval ownership Ritz-Carlton Destination Club program, thus adding Building G to Great Bay. Building G added twelve more two-bedroom suites to NA and created the Commercial Unit-1 on the top floor. The conflicts and controversy in this matter are rooted in these amendments.

¶9 NA was formed for the sole purpose of taking ownership, operation, and maintenance of CU-1. Although NA was formed in November 2005, it was not until 2006 when NA began to operate and pay for CU-1. Two years later the Ritz-Carlton formally conveyed the deed to CU-1 to NA on December 20, 2008. From 2006 through 2016, only NA members were responsible for common area charges associated with this lounge; i.e., only 288 members of the 1,260 were responsible. These charges were assessed by Great Bay to NA and in turn, NA issued individual assessments for these charges to its members. These CU-1 common charge assessments were in addition to the individual assessments each condominium owner is subject to by Ritz-Carlton for their suites.

¶10 The underlying issue here is whether the conveyance of the Condominium Deed dated September 20, 2017, from NA to Great Bay is considered a valid conveyance, thus determining whether the October 22, 2021 invoices assessed to each NA member was a proper assessment. Despite an absence of a ruling in the underlying action, coupled with Great Bay's outright rejection of the deed conveyance and continued accrual of maintenance fees, Great Bay unilaterally

proceeded to issue, on October 22, 2021, invoices to all 288 NA members demanding payment for all common charges assessed from September 2017 through October 2021. NA alleges their conveyance of the deed to Great Bay on September 20, 2017, relieved NA members of the duty to pay common area charges on the building for those years and consequently Great Bay, as the owner, is entirely responsible for the maintenance of the lounge and the outstanding costs.

¶11 In their October 22, 2021 demand letter, Great Bay required payment in full for the five years of past assessments by November 22, 2021, stating: “[i]f the invoice is not paid in full within 30 days the Members Association will take further action as provided for in the Declarations.” The letter directed NA members to refer to the Declarations and Amendments on the Ritz-Carlton’s webpage.

¶12 To support their respective positions, each party introduced several exhibits consisting of the Declaration, Supplementary Declaration, several amendments, Articles of Incorporation and Bylaws for each association, and Condominium Deeds. The Declarations and Amendments set forth several options Great Bay may exercise to address delinquent assessments, including locking members out of their condominium units and preventing them from accessing all amenities of the Ritz-Carlton premises until the assessments are paid in full. The regular annual assessments were issued by the Ritz-Carlton on October 1, 2021, with a deadline of November 2, 2021, payment options, and other punitive measures the Ritz-Carlton may take to address any delinquent member, including a “lock-out” option. As stated *supra*, three weeks later the invoices in dispute were issued to each NA member at approximately \$3,500 per member, totaling over \$1 million, and were due by November 22, 2021.

¶13 Upon receiving this second notice, NA filed the instant motion for a temporary restraining order and preliminary injunction. The Court granted the temporary restraining order on November 12, 2021. On November 14, 2021, Great Bay issued a Unanimous Written Consent directing the third-party billing company, Concord Servicing Corporation, to rescind the invoices issued on October 22, 2021.<sup>5</sup> However, despite inquiries, Great Bay did not refund any NA members who had already paid the assessments.<sup>6</sup> On December 13, 2021, the Court issued a bench ruling granting the preliminary injunction.

**II. Analyzing the four factors of determining whether to issue a preliminary injunction in favor of the Defendant.**

¶14 When determining whether to issue a preliminary injunction, the trial court considers the following factors on a sliding-scale basis: 1) the probability of success on the merits; 2) the threat of irreparable harm if the injunction is denied; 3) the balance of the harm between the parties if granted; and 4) the public interest.<sup>7</sup> The Supreme Court, in *Yusef v. Hamed*, 59 V.I. 841, 854 (V.I. 2013), concluded that the soundest rule for the Virgin Islands is “a sliding-scale test, wherein a strong showing on one factor may decrease the weight assessed to other factors” allowing an injunction where “the probability of success on the merits is low if the Court determines that the moving party’s likelihood of irreparable harm is great and the nonmoving party’s likelihood of irreparable harm is very low.”

**A. NA has shown a reasonable probability of success on the merits.**

¶15 First, the Court must analyze NA’s probability of success on the merits. “When addressing

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<sup>5</sup> See Defendant’s Exhibit N-1, Unanimous Written Consent in Lieu of a Special Meeting of the Directors of Great Bay Condominium Owners Association, Inc.

<sup>6</sup> See December 9, 2021, Hearing Transcript at 196 lines 12-13.

<sup>7</sup> *JRC & Co. v. Boynes Trucking Sys., Inc.* 63 V.I. 544, 553 (V.I. 2015).

a reasonable probability of success on the merits, the movant must show that it has ‘a reasonable chance, or probability, of winning,’ not that it will actually prevail on the merits at trial.”<sup>8</sup> The movant must introduce evidence making out a *prima facie* case.<sup>9</sup> Here, NA has adequately validated its request for injunctive relief by showing pursuant to the Declaration of Condominium and its relevant Amendments, which govern both Great Bay and NA, and through application of Title 28 of the Virgin Islands Code, that Great Bay has improperly assessed the common charges of CU-1.

¶16 The pertinent Amendments to this motion are the Third Amendment to the Supplementary Declaration and the Fourth and Fifth Amendments to the Declaration. As stated *supra*, on November 15, 2005, the Third Amendment to the Supplementary Declaration and the Fourth Amendment to the Declaration established the Neighborhood Association in conjunction with the construction proposal for Building H, which would house twelve two-bedroom suites and require these residence owners to be members of the newly established Neighborhood Association.

¶17 On June 6, 2006, the Fifth Amendment to the Declaration added Building G to Great Bay, including twelve more two-bedroom suites and CU-1 on the fifth floor. The Fifth Amendment also detailed NA’s ownership and responsibilities regarding CU-1.

¶18 In December 2008, Ritz-Carlton<sup>10</sup> (also referred to as the “Developer”), conveyed a condominium deed to CU-1 to NA. From 2008 until 2013, CU-1 provided food and beverage services and was used solely for the use and enjoyment of NA members and occupants in Buildings G and H. After being operated and used exclusively by NA for a period of five years, NA renovated

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<sup>8</sup> *SBRMCOA, LLC v. Morehouse Real Estate Invs., LLC*, 62 V.I. 168, 187 (V.I. Super Ct. 2015).

<sup>9</sup> *Punnett v. Carter*, 621 F.2d 578, 583 (3d Cir. 1980).

<sup>10</sup> Sometimes referred to as the “Declarant.”

CU-1 from a food and beverage service to a fully operational restaurant, the Grand Palazzo Club. On August 8, 2013, NA and Great Bay entered into a “Residence Owners Agreement” (“ROA”), which allowed for members of Great Bay to access the Grand Palazzo Club and dine there for a fee and, in turn, Great Bay would assess NA for the charges of CU-1, but Great Bay would pay these charges.<sup>11</sup> This agreement was amended twice on November 1, 2014, and November 1, 2015, both amendments modifying the agreement to allow for Great Bay members to have more access to the lounge and its amenities, and modified the payment of the CU-1 assessments.<sup>12</sup> The First Amendment modified the ROA to allow for Great Bay members to participate in the breakfast service, receive a fifteen percent (15%) discount on menu prices for meals and beverage services, and access wine storage lockers without charge. Additionally, NA agreed to pay Great Bay a monthly aggregate equal to fifteen percent (15%) of the charges incurred by the members and their guests during the month for all meals and beverage services.

¶19 Under the Second Amendment, the ROA was modified again and charged Great Bay members for breakfast services at the same rate NA members paid and additionally changed the discount for members, from fifteen percent (15%) on beverage services to ten percent (10%). Most importantly, the Second Amendment modified the agreement where Great Bay would pay an annual fee for access to the lounge in an amount equal to half of the annual dues obligation of NA to Great Bay with respect to CU-1.<sup>13</sup>

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<sup>11</sup> See Plaintiff’s Exhibit 15, Residence Owners Agreement dated August 8, 2013.

<sup>12</sup> See Plaintiff’s Exhibit 16, First Amendment to the Residence Owners Agreement dated November 1, 2014, and Exhibit 17, Second Amendment to the Residence Owners Agreement, dated November 1, 2015.

<sup>13</sup> See *Id.*

¶20 This arrangement between NA and Great Bay continued until the end of 2016.<sup>14</sup> In 2016, NA alleges they were in the process of transferring ownership to Great Bay and assisting with transition of the operation of the Grand Palazzo Club to keep it functional as a restaurant.<sup>15</sup> Great Bay disputes this; however, acknowledged these discussions in their Complaint in a different, but related case, ST-2019-CV-00650.<sup>16</sup> Neither party provided documentation to support either contention; however, on September 20, 2017, NA signed a deed conveying CU-1 to Great Bay, which lead to the filing of the Complaint.

¶21 Great Bay rejects the deed conveyance and contends discovery is needed to determine the validity of the deed, as Mr. Cutrona, Sr. created five originals of the deed. The five originals were distributed accordingly: a copy sent via Fed Ex was mailed to Abigail Chung, then-Vice-President of Great Bay in 2017, a copy sent to John Doyle, then-President of Great Bay, a copy retained by Mr. Cutrona, Sr., a copy transmitted to NA's then-Secretary Marc Betesh, and a final copy was sent to NA's counsel.

¶22 On March 6, 2018, NA's counsel recorded the deed and transmitted a copy of the recorded deed on March 23, 2018, to Great Bay's counsel. Not only does Great Bay move to cancel the deed as an improper conveyance, but they also question the validity of the deed because of what appears to be different signatures on five originals. Mr. Cutrona, Sr. testified that he created five duplicate copies, containing identical language.<sup>17</sup> Title 28 Virgin Islands Code § 132 provides: "[t]he record of any document in the office of the recorder of deeds, *or a copy of such record*, shall be admissible in evidence in any court in the Virgin Islands." In the context of a duplicate deed, the federal rules

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<sup>14</sup> November 19, 2021, Hearing Transcript at 23 lines 7-25 and 24 lines 1-23.

<sup>15</sup> *Id.*

<sup>16</sup> See Plaintiff's Exhibit 13 at 5.

<sup>17</sup> December 13, 2021, Hearing Transcript at 82 lines 15-25 and 83 lines 1-25 and 84 lines 1-4.

of evidence provide: “a duplicate is admissible in the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.” See *Enfield Green Homeowners Ass’n v. Francis*, 340 F.Supp.2d 590, 594 n.6 (D.V.I. 2004). The Court finds there is no genuine issue raised as to the authenticity of the original as the five duplicates sent to members of both parties are identical, but for slight differences in the signatures. Still, Great Bay argues discovery is needed to determine whether there was a proper conveyance.

¶23 Since the conveyance on September 20, 2017, NA has not paid common assessment dues on CU-1. NA argues Great Bay had an obligation to accept the deed, so long as it was free of service contracts and other obligations, pursuant to the Fourth Amendment to the Declaration. Arguing, therefore, NA does not own the Grand Palazzo Club and does not owe these assessments. Great Bay argues the conveyance is not valid because they did not accept the deed, had no obligation to accept the deed, and regardless of ownership, NA’s members are responsible for the CU-1 assessments per the Declaration. The Third Amendment to the Supplementary Declaration and the Fourth and Fifth Amendments to the Declaration provide enough context to ascertain whether these invoices were assessed properly and should be enjoined.

**i. Legal Analysis**

¶24 The Supreme Court of the Virgin Islands has held that a condominium association’s by-laws and governing documents are to be construed “according to the general rules governing the construction of statutes and contracts.” See *Weary v. Long Reef Condominium Association*, 57 V.I. 163, 170 (V.I. 2012) (citing *Singh v. Singh*, 9 Cal Rptr.3D 4, 27-28 (Cal Ct.App.2004)). When the governing documents of condominium associations are clear and unambiguous, the Court must



follow their plain meaning. *See Id.* at 169. “To determine whether a contract is ambiguous, we resort to principles of contract interpretation, keeping in mind that our primary purpose is to ascertain and give effect to the parties’ objective intent.” *Phillip v. Marsh-Monsanto*, 66 V.I. 612, 624 (V.I. 2017). The Court cannot “rewrite [the Declaration or Amendments] by looking to evidence outside the four corners of the [Declaration or Amendments] to determine the intent of the parties.” *Id.* at 628.

¶25 Here, the Third Amendment to the Supplementary Declaration established NA as a member of Great Bay and its responsibilities for CU-1. It also lays the premise as to why both parties dispute the interpretation of certain provisions of the Declaration. The Third Amendment, paragraph four (4) states, in pertinent part:

“The twelve (12) Residences which are the subject of this amendment are Two Bedroom Suites and, as such, all Owners of Residence Interests therein shall in addition to being Members of the Condominium Association,<sup>18</sup> be mandatory members of the Neighborhood Association, whose contemplated sole purpose shall be to own and operate a Commercial Unit.... More particularly, and in accordance with the separate organizational and governing documents of the Neighborhood Association, its members shall control the Neighborhood Association and be responsible for all costs and expenses related to the ownership and operation of the Commercial Unit owned by it, including but not limited to any services that it may elect to provide.”

NA premises its entire argument on ownership. NA points to this language to emphasize that the responsibility for the assessments is only for commercial units which NA owns.

¶26 NA’s Bylaws support NA’s contention. The Bylaws provide for the Powers of the Board<sup>19</sup> which gives the Board the authority to “purchase, lease or accept conveyance of the Lounge

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<sup>18</sup> The “Condominium Association” is referring to Great Bay. *See infra* at 11.

<sup>19</sup> NA’s Bylaws Article IV, § 3.

without the vote of the Members,”<sup>20</sup> ... “and convey property,”<sup>21</sup> as well as the power “to make and collect assessments, and use and expend said assessments to carry out the purposes and powers of the [Neighborhood] Association.”<sup>22</sup> The Board is elected by the members of the Association and is responsible for carrying out the affairs of the Association. Within NA’s own Bylaws, the Board has the ability to convey CU-1. Hence, they argue, if NA no longer owns it, they cannot and should not be held responsible for its upkeep. To the contrary, Great Bay contends that this same language in the Third Amendment shows that the suite owners are exclusively responsible for the assessments. The above-quoted language and similar language are reiterated throughout the Declaration, but the Court finds the Fourth and Fifth Amendments to the Declaration provide more clarity to the plain meaning of the Declaration.

¶27 The Fourth Amendment to the Declaration, paragraph five (5), effective November 15, 2005, further specifies the rights and duties of NA. The Fourth Amendment provides, in pertinent part:

“The Declarant or an Owner of a Commercial Unit may also convey a Commercial Unit, or any subdivision thereof in the case of Declarant, to the Association for no or nominal consideration without the consent of any other Owner or the Association, and the Association shall be obligated to accept such conveyance. A Commercial Unit will only be transferred to the Association free of service contracts or other obligations other than as provided in the Declaration, By-laws and Rules and Regulations, all as amended from time to time.”

NA relies heavily on this Amendment to support their argument that not only did NA have the authority to convey the deed, but also Great Bay had the duty to accept the deed, therefore Great Bay owns CU-1. Conversely, Great Bay argues the “association” being referred to in the Fourth

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<sup>20</sup> *Id.* at §3 (c).

<sup>21</sup> *Id.* at §3 (l).

<sup>22</sup> *Id.* at §3 (d).

Amendment refers to NA. Considering Great Bay’s interpretation, it would mean NA can only convey the unit back to themselves.

¶28 If the Court were to adopt Great Bay’s interpretation of the Fourth Amendment, it would read as follows:

“[t]he Declarant or an Owner of a Commercial Unit may also convey a Commercial Unit, or any subdivision thereof in the case of Declarant, to the [Neighborhood] Association for no or nominal consideration without the consent of any other Owner or the [Neighborhood] Association, and the [Neighborhood] Association shall be obligated to accept such conveyance.”

This reading would imply that the Owner, who at the time was the Neighborhood Association by virtue of this Amendment, would be able to convey the unit they own back to themselves without consent. This argument seems illogical and undermines the plain reading of the Declaration.

¶29 The Court interpreted that the Association referred to in the Fourth Amendment is Great Bay. Each set of governing documents defines which association is being referred to. Throughout the Declaration and the Supplementary Declaration, and their amendments, Great Bay is referred to as the “Condominium Association,” the “Association,” and the “Members Association,” whereas the Neighborhood Association is exclusively referred to as “Neighborhood Association.” The Declaration defines the “Members Association” as: “Great Bay Condominium [Owners] Association, Inc., a not-for-profit Virgin Islands corporation established by Declarant ... hereinbefore and hereinafter the ‘Members Association’”.<sup>23</sup> This language conveys to the Court that the Declaration, and its amendments, are specifically tailored to the duties and obligations of Great Bay, except for where in the amendments there are defined obligations of NA. For example,

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<sup>23</sup> The Condominium Declaration ¶13, at 13.

in the Third Amendment to the Supplementary Declaration Section four (4), paragraph one (1) describes Great Bay as both the Condominium Association and the Members Association, stating:

“[A]ll Owners of Residence Interests therein shall in addition to being Members of the Condominium Association, be mandatory members of the Neighborhood Association...”<sup>24</sup>

and then,

“[i]n addition to the lien in favor of the Members Association against each Residence or Residence interest, ... [these members are also] subject to a lien in favor of the Neighborhood Association...”<sup>25</sup>

Whereas NA is explicitly referred to as “Neighborhood Association” both times in the amendment.

The language in this amendment is consistent with the October 22, 2021 letter sent from Great Bay to NA which refers to itself as both “the Association,” and the “Members Association,” in the context of examining the Declaration.<sup>26</sup>

¶30 This proposition is further supported in NA’s Bylaws and Articles of Incorporation, which reflect the same interchanging of “Association,” and the “Members Association,”<sup>27</sup> when referring to NA in those documents which were specifically tailored to encompass NA’s duties and obligations, similar to the Declaration’s encompassing of Great Bay.<sup>28</sup> As stated, condominium associations’ declarations and bylaws are governed according to contract and statutory interpretation. When a contract is ambiguous, the court’s purpose is to ascertain and give effect to

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<sup>24</sup> Third Amendment to the Supplementary Declaration § 4, ¶1.

<sup>25</sup> Third Amendment to the Supplementary Declaration § 4, ¶2.

<sup>26</sup> Defendant’s Exhibit B, October 22, 2021, Letter from Great Bay to NA Members, at 3.

<sup>27</sup> Plaintiff’s Exhibit 8, NA’s Bylaws, at 1: “The name of the association is The Neighborhood Association, Inc. (hereinafter referred to as the “Association”).

<sup>28</sup> Plaintiff’s Exhibit 9, Declaration of Condominium, at 14 ¶13: “The operations of the Members Association shall be conducted by Great Bay Condominium [Owners] Association, Inc. a not-for-profit Virgin Islands corporation established by Declarant ... (hereinbefore and hereinafter the “Members Association”). Plaintiff’s Exhibit 9 at 33: “The name of the association shall be Great Bay Condominium Owners Association, Inc. (sometimes hereinafter the “Association”)....

the parties' objective intent and not the subjective intentions of each party. *See Phillip v. Marsh-Monsanto*, at 625. "When a contract uses different language in proximate and similar provisions, we commonly understand the provisions to illuminate one another and assume that the parties' use of different language was intended to convey different meanings." *Streibich v. Underwood*, 54 V.I. 488 (V.I. 2021) (quoting *Penncro Assocs. V. Spring Spectrum, L.P.*, 499 F.3d 1151, 1156-57 (10th Cir. 2007)). When considering the text of the documents as a whole and the objective intent of the parties, it can be reasonably interpreted that the general "Association" referred to in each document can only mean the association as defined in that particular document, unless specified otherwise. Under the plain meaning of the Declaration and evidenced by Great Bay's letter and the Developer's intent to explicitly refer to NA as the "Neighborhood Association," throughout the Declaration and NA's governing documents, it appears that the "Association" in this paragraph of the Fourth Amendment is referring to Great Bay.<sup>29</sup>

¶31 To further solidify their position, NA argues it is NA, and not the individual suite owners, who formerly owned the Grand Palazzo Club and NA was liable for assessments, therefore the individual invoices were improperly assessed. However, under NA's Articles of Incorporation and Bylaws, NA and its members are one in the same. The membership interest in NA is established at the time the deed to the suite interest is recorded with the Recorder of Deeds for St. Thomas/ St. John.<sup>30</sup> The Articles of Incorporation, Article V, Section 4 further states:

"Membership shall be appurtenant to and may not be separated from ownership of any said Suite Interest and ownership of such Suite Interest shall be the sole qualification for membership. Membership shall automatically terminate

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<sup>29</sup> See *supra* at FN 12.

<sup>30</sup> NA's Articles of Incorporation Article V, §4.

upon sale or other disposition of title, in accordance with the provisions of the Declaration.”<sup>31</sup>

Article V, Section 5 clarifies:

“Membership in the [Neighborhood] Association may not be assigned, hypothecated or transferred in any manner except with the conveyance of a Suite Interest. Membership shall terminate upon the termination of the Declaration or upon transfer of ownership of a Suite Interest, provided the transfer is accomplished in accordance with all of the provisions of the Declaration.”<sup>32</sup>

The articles of incorporation are coherent with the longstanding practice of NA billing the members for the CU-1 assessments as NA serves as the conduit for the assessments. The issuance of direct assessments to each NA member is not pivotal, but the mere issuance of the assessments is. Although NA contends the assessments directly to NA members was improper, it is not an issue of concern because even if Great Bay had assessed NA, which they did in 2017, 2018, and 2019,<sup>33</sup> NA would have still refused to pay, which they have.

¶32 The CU-1 assessments are directly tied to ownership of CU-1; therefore, the invoices were improperly assessed as ownership has yet to be determined. The Fifth Amendment to the Declaration supports this position. The Fifth Amendment states the Ritz-Carlton conveyed CU-1 to the Neighborhood Association for the “exclusive benefit of the occupants ... of the Two Bedroom Suites...” Further specifying in paragraph five (5):

“All Owners of Residence that are designated as a Two Bedroom Suite shall, in addition to being Members of the Condominium Association, be mandatory members of the Neighborhood Association *whose sole purpose is to own and operate Commercial Unit CU-1*, which shall be conveyed by the Declarant to the Neighborhood Association and utilized for the *exclusive benefit* of the occupants from time to time of the Two Bedroom Suites, whether or not such occupants are Members of the Neighborhood Association, *and as more particularly described in*

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at §5.

<sup>33</sup> Plaintiff’s Exhibit 13 at 2.

*the organizational and governing documents of the Neighborhood Association. As a member of the Neighborhood Association, Owners of Two Bedroom Suites are responsible for all costs and expenses of the ownership and operation of Commercial Unit CU-1, including but not limited to any services that it may elect to provide.”*

Great Bay relies on this, and similar language throughout the Declaration, to argue that the assessments are proper because it is the suite owners’ responsibility to continue paying the assessments on CU-1, regardless of who owns CU-1. Great Bay uses the fact that Marriott Vacation Club Trust and the Ritz-Carlton, together, own forty-nine percent (49%) of the shares of NA and paid a portion, approximately eight (8) interests worth, of their assessments to support Great Bay’s contention suite owners are personally liable. Great Bay argues NA members are required to pay the assessments and then dispute the charges. Under paragraph nine (9) of the Declaration, “[n]o Member may withhold payment of any regular or special assessment or any portion thereof because of any dispute which may exist between that Member and the Members Association, ... but rather each Member shall pay all assessments when due pending resolution of any dispute.”<sup>34</sup> However, the CU-1 assessments are separate and apart from the annual assessments which follow the “pay now, dispute later” process allowed for in the Declaration.<sup>35</sup> The CU-1 assessments are common assessments under Title 28 § 909, *see infra*, similar to the annual assessments, which are linked to each individual unit, (thus creating the personal liability for those assessments). The Fifth Amendment ties the personal liability of CU-1 to the operation and ownership of CU-1.

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<sup>34</sup> The Condominium Declaration ¶9, at 12.

<sup>35</sup> *Id.*

¶33 This interpretation is supported by the Developer’s emphasis on the responsibility of CU-1 being connected to NA member’s “exclusive benefit” in the Fifth Amendment. As the owner with exclusive control and use of the Grand Palazzo Club, NA had the responsibility for the assessments because only NA members were benefitting from the lounge; as opposed to all members of Great Bay benefitting from the other common assessments, such as maintenance fees for sidewalks and upkeep of other common facilities. However, if the conveyance of CU-1 is proper, and that issue has not been determined, then Great Bay would have the exclusive benefit of CU-1, not NA.

¶34 Yet, Ms. Chung, Great Bay’s President, testified that under Great Bay’s interpretation of the Declaration, NA members would be responsible for these assessments in perpetuity. She stated that the suite owners will be liable for as long as they are members of the Neighborhood Association. Further explaining, irrespective of the purported property transfer to Great Bay, “when a suite owner sells their unit, they don’t have the obligation anymore.”<sup>36</sup> Mr. Doyle, Great Bay’s Treasurer, defended this position to a greater extent even stating that for example if a rich person purchased the Grand Palazzo Club to operate a restaurant on his own accord, NA suite owners would still be responsible for the common assessments.<sup>37</sup> This interpretation of the Declaration overlooks the language of the Fifth Amendment which signals to the Court that the responsibility for these assessments is inextricably tied to ownership of the commercial unit.

¶35 Finally, Title 28 of the Virgin Islands Code § 909 supports NA’s argument that the common charges are proportional to ownership interest. Section 909 provides: “[t]he common profits of the

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<sup>36</sup> December 9, 2021, Hearing Transcript at 70, lines 12-13.

<sup>37</sup> *Id.* at 114, lines 4-17.



property shall be distributed among, and the common expenses shall be charged to, the apartment owners according to the percentage of the undivided interest in the common areas and facilities.”

¶36 Plaintiff argues that these assessments are an issue of real property as restrictive covenants running with the land; therefore, the assessments are not tied to ownership of CU-1 as NA states. The Declaration explicitly states that the provisions, including the obligation to pay annual assessments, are covenants running with the land.<sup>38</sup> However, the Fourth and Fifth Amendments, which are specific to CU-1, tie the responsibility of the CU-1 assessments to ownership by the Association as a whole. If it is later determined that the conveyance was proper and Great Bay has been declared the owner of the Grand Palazzo Club since September 20, 2017, then the logical conclusion of § 909 would be that the assessments must be distributed among all Great Bay members, and not only the 288 NA members. Therefore, the analysis depends on whether the CU-1 assessments are common assessments and which language is more germane to the issue, the amendments or the Act.

¶37 Throughout the hearings, the assessments associated with CU-1 were referred to as annual assessments, annual maintenance fees, members’ dues, and common charges. Mr. Doyle testified that all of these terms essentially had the same meaning and that they are common charges.<sup>39</sup> He specified, “[o]ne of the expenses of the [Neighborhood] Association is their share in the common expenses which is budgeted by GBCOA every year. ... CU-1 has a share in the common expenses of the Condominium ... CU-1 has an obligation to pay 18 Interests of dues to cover its share of the condominium expenses – general condominium expenses.”<sup>40</sup> When asked directly whether

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<sup>38</sup> The Condominium Declaration ¶15, at 14.

<sup>39</sup> December 9, 2021, Hearing Transcript at 110 lines 12-25 and 111 lines 1-5.

<sup>40</sup> *Id.* at 34 line 25 and 35 lines 1-13.

those CU-1 general condominium expenses were the subject of the invoices, Mr. Doyle said, “yes”.<sup>41</sup> Hence, while the ownership of CU-1 has yet to be determined, and taking into consideration the governing documents, the evidence and testimony presented, and a reading of Title 28, NA has set forth more than a *prima facie* case to show a reasonable likelihood of success on the merits.

**B. The threat of irreparable harm to NA members is likely if injunctive relief is denied.**

¶38 Next, the Court looks at the threat of irreparable harm to NA if the assessments are prematurely issued. A movant suffers irreparable harm where there is “certain and imminent harm for which a monetary award does not adequately compensate.” *Yusef v. Hamed*, 59 V.I. 841, 854 (V. I. 2013). The outstanding assessments for CU-1 are in excess of \$1 million dollars. Ms. Chung testified there was about \$760,000 in maintenance fees, \$116,000 in late fees, and \$142,000 of interest over the five-year period.<sup>42</sup> As provided for in the Declaration, one of the penalties for a delinquent owner is the management company’s ability to lockout a member from his or her residence and all Ritz-Carlton facilities. This was specified in the October 1, 2021 letter sent from Ritz-Carlton to all Great Bay members regarding the annual dues. This letter cites to Section 8.2 of the Supplementary Declaration, *Section VI, Assessments of the Affiliation Agreement*, and states:

“Members who have unpaid annual assessments, late fees and/ or interest owing to the Association, shall be ‘locked-out’ from all Ritz-Carlton Destination Clubs, including their home club in St. Thomas. ‘Lock-out’ includes no access to reserved allocations or space available reservations at any Destination Club. If you do not timely make payment of all amount due and owing for common charges, the ‘lock-out’ will be implemented and shall remain in place until all amounts due and owing, including interest and late charges, are paid in full.”

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<sup>41</sup> *Id.* at 35 line 18.

<sup>42</sup> December 13, 2021, Hearing Transcript at 23, lines 22-25.

Ms. Marsha Leighton-Herrmann, Director of Finance for the Ritz-Carlton Club St. Thomas, testified that this is a standard letter that the management company uses; originally drafted in 2010 and sent to members annually ever since.<sup>43</sup> In the October 22, 2021 letter sent from Great Bay to NA members regarding the additional assessments, Great Bay included language which allows Great Bay to take necessary actions, which implied their capability to lockout members from their residences.<sup>44</sup> NA contends that this option to lockout a member from their residence constitutes irreparable harm.

¶39 Great Bay’s sole argument regarding “lock-out” is that they do not intend to, nor do they have the ability to lockout members. Mr. Doyle testified that the Board met in September to discuss the past due assessments.<sup>45</sup> He further stated that the Board decided that the only penalties will be monetary, and they would not implement lock-outs.<sup>46</sup> Despite this assertion, neither Mr. Doyle nor Mrs. Chung provided meeting minutes or any other documentary evidence to support such a claim. Yet, Great Bay argues only the management company has the capability to lock-out members and that the Ritz-Carlton’s October 1, 2021 letter explicitly providing for a lock-out measure only applies to annual assessments. This argument is unpersuasive.

¶40 Ms. Leighton-Herrmann testified that the lock-out system is used against delinquent members and inhibits them from being able to check into their suite for their allotted time.<sup>47</sup> As the managing company for both associations, the Ritz-Carlton develops the budgets for both. The Ritz-Carlton has a contract with Concord Servicing Corporation (“Concord”), a third-party billing

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<sup>43</sup> December 8, 2021, Hearing Transcript at 23, lines 2-6.

<sup>44</sup> Defendant’s Exhibit B, at 4 stating: “If the invoice is not paid in full within 30 days the Members Association will take further action as provided for in the Declarations.”

<sup>45</sup> December 9, 2021, Hearing Transcript at 172, lines 24.

<sup>46</sup> *Id.* at 181 lines 1-6.

<sup>47</sup> December 8, 2021, Hearing Transcript at 19, lines 7-16.

company, to assist with disseminating invoices and collecting payments. Once Concord develops a list of delinquent members, they send the list to Members Services and anyone who has not paid has their account locked so they cannot use their time or reservations at the club or any other destination club until the balance is paid. Ms. Leighton-Herrmann further stated the lock and key system for the condominium owners is similar to a hotel reservation; members reserve their stay and check-in at the security desk where they are handed an electronic key which will unlock their units.<sup>48</sup> When Ritz-Carlton implements this punitive measure against a delinquent member, the front desk clerks are notified and withhold keys.

¶41 Additionally, Mr. Cutrona, Sr. testified that the Program Manager for the St. Thomas Club is The Cobalt Travel Company, L.L.C (“Cobalt”), a Marriott subsidiary.<sup>49</sup> Cobalt enforces lock-out procedures against delinquent members for both annual and special assessments. Notably, the October 22, 2021 letter from Great Bay to NA members came only three weeks after the Ritz-Carlton sent their annual letter to each NA member which contains language that the lock-out procedures apply to “*all amounts due and owing for common charges.*”<sup>50</sup> Irrespective of Great Bay’s argument that they have no intent on using lock-out as a punitive measure, there was no conclusive testimony or any documentary evidence presented to establish Great Bay has no authority to demand or request Ritz-Carlton to institute a lock-out. Moreover, there was nothing to preclude Great Bay from implementing policies and contracting directly with Cobalt, as they did with Concord, to enforce the lock-out mechanism. The timing of these two letters and the

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<sup>48</sup> December 8, 2021, Hearing Transcript at 21 lines 16-25 and 22 lines 1-20.

<sup>49</sup> December 13, 2021, Hearing Transcript at 100 lines 19-25 and 101 lines 1-3.

<sup>50</sup> Defendant’s Exhibit C, October 1, 2021 Letter from Ritz-Carlton to all Great Bay members, at 2.

explicit threat of lock-out in the Ritz-Carlton’s letter is a contributory factor for a reasonable person to conclude that the threat of a lock-out resulted in apparent showing of irreparable harm to NA.

¶42 The harm, or the appearance of it, is not mitigated by virtue of the existence of alternative measures. Neither is it mitigated or absolved because Great Bay has not decided on that specific course of action. Mr. Doyle testified that the Great Bay Board met prior to the issuance of the letter<sup>51</sup> and the Board discussed four options they could take against delinquent members: (1.) lock-outs, (2.) placing a lien on the unit, (3.) renting out the member’s unit, or (4.) seeking monetary judgments against the delinquent members. The Court has no assurances in Great Bay’s position in the absence of minutes or written affirmation to support the Board’s intent of not instituting a lock-out measure for failure to pay the invoices timely. Great Bay’s reliance that NA members will not be harmed because Great Bay did not explicitly state they would lock-out delinquent members fails to recognize the “intangible benefits associated with property ownership, such as the increased sense of pride, well-being, and security attendant to the right to choose when and how to use, maintain and cherish one’s property....” *Hansen v. Government of the Virgin Islands*, 53 V.I. 58, 91 (V.I. Terr. Ct. 1999). “A timeshare plan is a form of property ownership that allows owners of interests in the plan to share rights to use the timeshare plan property, where typically each owner is allotted their own period of time for use.” *Great Bay Condominium Owners Association, Inc. v. Government of Virgin Islands*, 2018 WL 4690372 \*1 (D.V.I. 2018).

¶43 Further, the Third Circuit has held that “where ‘interests involving real property are at stake, preliminary injunctive relief can be particularly appropriate because of the unique nature of the property interest.’” *Minard Run Oil Co. v. U.S. Forest Service*, 670 F.3d 236, 256 (3d. Cir.

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<sup>51</sup> December 9, 2021, Hearing Transcript at 172, lines 24.

2011) (quoting *RoDa Drilling Co. v. Siegal*, 552 F.3d 1203, 1210 (10th Cir. 2009). While it is established that timeshare owners have real property interests, NA is “still required to demonstrate that irreparable harm will result from a temporary cessation of its alleged property right.” *North Jersey Vineyard Church v. Township of South Hackensack*, 2016 WL 1365997 \*3 (D. N.J. 2016). The threat of irreparable harm must be “a presently existing one and not a remote or speculative possibility.” *Id.* Here, NA has adequately shown that the threat of lock-out is an imminent threat and that it is highly probable Great Bay would exercise this punitive measure.

¶44 This proposition is supported by Mr. Doyle’s testimony. The only evidence provided was Mr. Doyle’s recollection, particularly representing one vote as a Board member, of the decision to not impose lock-outs, or the other measures. But even if there was written evidence to show they will not exercise the lock-out option, there is still nothing to preclude Great Bay from subsequently changing their decision so as to enforce a non-monetary punitive measure to ensure NA members pay the assessments. The insistence, without documentary support, that the Board would likely only seek money judgments against the members is not convincing.

¶45 Even if this lock-out was imaginary or NA’s unfounded speculation, Great Bay confirmed NA’s suspicions when they issued the December 3, 2021 letter instituting a lock-out measure. The letter reads, in pertinent part:

*“Effective November 12, 2021 if a member did not pay their dues they were considered delinquent and were locked out of using their time and privileges at the club until they became current.”*

This letter magnifies NA’s concerns about being locked out of their units is not some speculative misreading of the Declaration regarding the action that Great Bay may take, but is an action Great Bay has taken and will likely take again.

¶46 Further, this letter came three weeks after the Court issued the TRO and ordered Great Bay to rescind the invoices sent to NA. Yet, this letter signals to the Court that lock-outs are standard and used by Great Bay against delinquent members. In fact, this Court believes, the intervention of the TRO, which was issued before Great Bay's November 22, 2021 deadline to pay the assessments, is the only measure that prevented Great Bay from implementing the lock-out. This future threat of lock-out was sufficient to constitute irreparable harm.

¶47 In addition to being deprived of his property, Mr. Cutrona, Sr. testified to other consequences of being locked out of his unit.<sup>52</sup> He testified that members are provided with the information of their allotted reservations sixteen months in advance in order to provide members enough notice to arrange airfare, rent out their units, arrange schedules, and book other aspects of their trips.<sup>53</sup> Locking members out of their units will severely harm NA members, including having to make alternative, more costly arrangements regarding airfare and lodging, or even cancelling the trip altogether. Mr. Cutrona, Sr. stated that regarding his 2022 reservations he has offered one of his weeks to the winner of a charity auction.<sup>54</sup> He described the embarrassment he would face if he were locked out of his unit and then must rescind his offer.<sup>55</sup>

¶48 Even more concerning is Great Bay's option under the Sixth Amendment to the Supplementary Declaration, which allows Great Bay to rent out the residences of NA members who are more than sixty (60) days delinquent in paying their assessments.<sup>56</sup> Even if the member becomes current and in good standing, the member will have no right to use their allocated

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<sup>52</sup> December 8, 2021, Hearing Transcript at 105 lines 9-25, 106 lines 9-25, and 107 lines 1-2.

<sup>53</sup> *Id.*

<sup>54</sup> Affidavit of Salvatore M. Cutrona, Sr.'s at ¶13.

<sup>55</sup> *See Id.*

<sup>56</sup> Sixth Amendment to the Supplementary Declaration at 2, ¶1(a).

residence interest of that time.<sup>57</sup> Without injunctive relief, all NA members who have not paid the CU-1 assessments, despite paying the annual assessments of their respective unit, would be delinquent and in jeopardy of having their units being rented. The Court finds that locking members out of their residence is punitive enough; however, to exercise the option to rent out the members' units and to deny their use after becoming current, even if the unit is not rented, is clearly irreparable harm. Despite Great Bay's insistence that the only penalty would be money judgments, without injunctive relief there is nothing to prevent Great Bay from electing these punitive measures. "The alternatives presented by [Great Bay] do not negate the existence of irreparable harm to [NA]." See *SBRMCOA, LLC v. Beachside Associates, LLC* 2015 WL 5168350 \*5 (V.I. Super. Ct. 2015). "Such a harm is irreparable because it is impossible to restore past deprivation of property use." *Id.* Thus, the threat and ability of irreparable harm is enough to enjoin Plaintiff's actions. See *SBRMCOA, LLC v. Beachside Associates, LLC* 2015 WL 5168350 \*4 (V.I. Super. Ct. 2015). Considering these additional harms, coupled with the deprivation of property, the Court finds this factor weighs heavily in favor of NA.

**C. Great Bay will not be harmed if injunction is granted.**

¶49 As to the third factor, the balancing of harms between the parties, the court looks at whether the nonmoving party will suffer irreparable harm if this injunction is issued, and if so to what extent.<sup>58</sup> The court also considers whether the injunction would destroy the status quo, as one of the goals of a preliminary injunction is to maintain the status quo.<sup>59</sup> Here, the underlying litigation has been pending for four years and Great Bay has not collected on these assessments for five

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<sup>57</sup> *Id.* at ¶1(c).

<sup>58</sup> *SBRMCOA, LLC*, 62 V.I. at 188.

<sup>59</sup> *Id.*



years. Great Bay argues that they will be harmed by the issuance of an injunction because they cannot use those funds for the betterment of the association. Despite a lack of testimony, Great Bay argues there are currently exorbitant maintenance costs associated with operating CU-1. Mr. Doyle testified that Great Bay is responsible for the maintenance and upkeep of the entire Ritz-Carlton premises, including CU-1, and Great Bay needs these funds to maintain CU-1.<sup>60</sup>

¶50 Ms. Chung testified that on several occasions Great Bay has held dinners with private chefs and other events in the Grand Palazzo Club during this five-year period and has excluded NA from any use of the lounge.<sup>61</sup> Mr. Cutrona, Sr. also stated NA requested to hold their annual Board meeting in the lounge which was denied.<sup>62</sup> In fact, since September 20, 2021, Great Bay has outright rejected any use of common space within the condominium, including the Grand Palazzo Club, member's reception area, and member's lounge.<sup>63</sup> Great Bay did not refute this testimony.

¶51 For the last five years, Great Bay has had exclusive control and use of CU-1. Great Bay argues NA members abandoned their use of CU-1, and under § 920 of the Condominium Act remain liable for common charges because the duty to pay assessments cannot be abandoned. However, NA members did not abandon their use of CU-1, but rather have been denied access to the property by Great Bay for failure to pay the assessments. Yet, despite Great Bay's exclusive use of CU-1, they expect NA's members alone to be responsible for approximately two hundred thousand dollars (\$200,000) of assessments annually for a unit they cannot access without permission from Great Bay and a unit they have been precluded from using.

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<sup>60</sup> December 9, 2021, Hearing Transcript at 64 line 25, 65 lines 1-9, and 66 lines 17-20.

<sup>61</sup> December 13, 2021, Hearing Transcript at 75 lines 4-13, 22-25.

<sup>62</sup> December 13, 2021, Hearing Transcript at 76 lines 1-3.

<sup>63</sup> December 8, 2021, Hearing Transcript at 119, lines 1-24.

¶52 Further, Great Bay argues they would be harmed if an injunction was issued because of the costs Great Bay incurred to invoice the NA members themselves. Ms. Leighton-Herrmann testified that Great Bay approached the management company to get their assistance with the issuing of the CU-1 assessment invoices, but the Ritz-Carlton declined.<sup>64</sup> Ms. Chung testified that because the Ritz-Carlton was not going to issue the assessments, Great Bay was “forced” to bill the NA members themselves, requiring Great Bay to separately contract with Concord to invoice the NA members.<sup>65</sup> Great Bay argues that by having to re-issue these assessments they will be harmed.

¶53 However, Great Bay was able to promptly notify NA members the invoices were rescinded by reason of the TRO with a mass email distribution to such members, at no added cost to Great Bay, thus it can be concluded that Great Bay can re-issue the invoices at minimal-to-no cost. The same invoices could simply be reissued by email, and the same members Great Bay sought to collect from in its October 2021 invoices would be readily billed again, with whatever additional interest or late fees accrued. Additionally, if Great Bay were to prevail in the underlying litigation, they can collect the assessments for the past five years with interest and include the time between the issuing of the injunction and the resolution and will be made whole at the conclusion. Therefore, considering the *de minimis* cost associated with reissuing the invoices, which Great Bay can recover with interest and that Great Bay has had the exclusive use of CU-1 for the last five years, the Court finds there are no significant monetary or other harms associated with Great Bay not reissuing the invoices.

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<sup>64</sup> December 8, 2021, Hearing Transcript at 51, lines 10-18.

<sup>65</sup> December 13, 2021, Hearing Transcript at 22 lines 9-25 and 23 lines 1-10.

¶54 Similarly, as Great Bay contracted directly with Concord to disseminate the invoices, they may also contract directly with Cobalt to enforce the lock-out procedures. Without the preliminary injunction, there would be nothing to prevent Great Bay from contracting with Cobalt. In weighing the harms to both parties, the Court finds NA would face much greater harm if the situation remained unchanged. By granting the injunction in favor of NA, the status quo would remain; NA members will still have full access to their property, and should Great Bay ultimately prevail, Great Bay would be able to collect the monies due for these assessments with interest.

**D. The public has a significant interest in the facilities at the Ritz-Carlton.**

¶55 With respect to the public interest, consideration should be given to Great Bay's necessity to use these funds for the betterment of the Ritz-Carlton complex as a whole. However, the public also has a significant interest in Associations complying with the Virgin Islands Condominium Act, their respective Declarations and all Amendments, and their own governing and organizational documents. As previously stated, the statutory construction of § 909 is interpreted as the common area charges for CU-1 are the responsibility of the owner, which has yet to be determined.

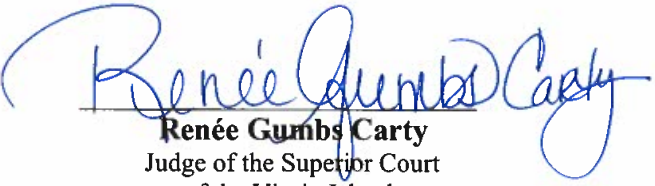
¶56 Furthermore, the public has an interest in ensuring that rights of condominium association members are not undermined. For the last five years, Great Bay has had control of CU-1, to the outright exclusion of NA, despite Great Bay's contention that NA is responsible for the maintenance fees forever. The Court has to take into consideration the apparent inequity in the mandate of an association to pay assessments in perpetuity for a property it may neither own nor has access to.

**Great Bay Condominium Owners Association, Inc.**  
**v. The Neighborhood Association, Inc.**  
**Case No. ST-18-CV-768**  
**Memorandum Opinion**


**2022 VI Super 41U**

Accordingly, the Court finds that all four factors weigh in favor of granting injunctive relief to the Defendant. An appropriate Order follows.

Dated: April 11, 2022

  
**Renée Gumbs Carty**  
Judge of the Superior Court  
of the Virgin Islands

ATTEST:  
Tamara Charles  
Clerk of the Court

By:   
Latoya Camacho  
for Court Clerk Supervisor 4/11/2022

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

\*\*\*\*\*

GREAT BAY CONDOMINIUM OWNERS )	)	CASE NO. ST-18-CV-768
ASSOCIATION, INC., )	)	
	)	
Plaintiff, )	)	ACTION FOR DECLARATORY
	)	JUDGMENT, TO CANCEL DEED
v. )	)	AND TO QUIET TITLE
	)	
THE NEIGHBORHOOD ASSOCIATION, INC., )	)	
	)	
Defendant. )	)	<u>Cite as 2022 VI Super 41U</u>
_____ )	)	

**ORDER**

The Court having issued a Memorandum Opinion on this date, it is hereby

**ORDERED** that Defendant's motion for preliminary injunctive relief is **GRANTED**; and it is further

**ORDERED** that preliminary injunction is imposed upon Great Bay Condominium Owners Association; and it is further

**ORDERED** that Great Bay Condominium Owners Association is **ENJOINED** from disbursing invoices upon Neighborhood Association members for any assessment fees regarding Commercial Unit-1, the restaurant and lounge, until final judgment of this matter; and it is further

**ORDERED** that Plaintiff's Motion to Dissolve or Modify Temporary Restraining Order is **DENIED**; and it is further

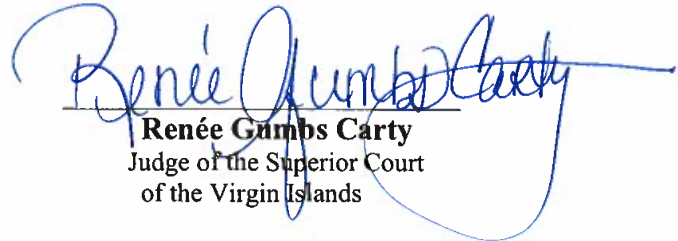
**ORDERED** that the Temporary Restraining Order entered on November 12, 2021, is **LIFTED**; and it is further

Great Bay Condominium Owners Association, Inc.  
v. The Neighborhood Association, Inc.  
Case No. ST-18-CV-768  
Memorandum Opinion Order  
Page Two


Cite as 2022 VI Super 41U

**ORDERED** that copies of this Order shall be distributed to W. Mark Wilczynski, Esquire,  
David Wentzel, Esquire, and Maria Tankenson Hodge, Esquire.

Dated: April 11, 2022

  
**Renée Gumbs Carty**  
Judge of the Superior Court  
of the Virgin Islands

**ATTEST:**  
Tamara Charles  
Clerk of the Court

By:   
for Latoya Camacho  
Court Clerk Supervisor 4/11/2022



**Superior Court of the Virgin Islands  
Docket Sheet**

IN THE SUPREME COURT  
OF THE VIRGIN ISLANDS

**FILED**

April 13, 2022 10:38 AM  
SCT-Civ-2022-0002  
VERONICA HANDY, ESQUIRE  
CLERK OF THE COURT

<b>Case #</b>	ST-2018-CV-00768	<b>Judge</b>	Hon. Renee Gumbs Carty
<b>Case Title</b>	Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.	<b>Case Type</b>	Civil - Real Property - Declaratory Judgment

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
158	04-11-2022 04:06 PM	Notice - Notice of Entry of Official Judgment/Order			Notice of Entry of Judgment/Order	
157	04-11-2022 04:04 PM	Order - Memorandum Opinion And Order	Official		Memorandum Opinion And Order Signed by Judge Renee Gumbs Carty.	
156	04-01-2022 02:01 PM	Notice - Notice of Entry of Official Judgment/Order			Notice of Entry of Judgment/Order	
155	03-30-2022 02:00 PM	Order - Order Signed	Official		Scheduling Order Signed by Judge Renee Gumbs Carty.	
154	03-30-2022 07:40 AM	Superior Court Transmittal - Superior Court Record	Official		Superior Court E-Record, Docket Sheet, Orders and Transcripts forwarded to the Supreme Court of the Virgin Islands	
153	03-29-2022 08:31 AM	Notice - Notice of Filing	Official		Notice of Filing	
152	03-28-2022 01:15 PM	Response - Response	Official		Reply to Plaintiff's Request for Ruling on Scheduling Order	
151	03-25-2022 10:17 AM	Motion - Motion Received	Official		Plaintiff's request for ruling on scheduling order Submitted by W. Mark Wilczynski, Esq.	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
150	03-18-2022 02:28 PM	Notice - Notice From The Supreme Court Regarding Appeal Received	Official		Supreme Court Scheduling Order received. Ordered that pursuant to V.I.R.APP.P 11(b), the Clerk of the Superior Court shall file the E-RECORD on or before April 1, 2022.	
149	01-26-2022 03:13 PM	Notice - Notice Of Service	Official		Notice Of Service--Plaintiff Great Bay Condominium Owners Association, Inc.'s Notice of Service of Second Set of Discovery Requests to Defendant The Neighborhood Association, Inc.	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
148	01-20-2022 03:09 PM	Transcript - FTR Transcript Requested	Official		FTR Transcript Requested	
147	01-14-2022 10:05 AM	Notice - Notice From The Supreme Court Regarding Appeal Received	Official		Supreme Court Docketing Order received. Appeal Docketed as SCT-CIV-2022-0002.	
146	01-14-2022 10:02 AM	Notice - Notice From The Supreme Court Regarding	Official		Notice of Appeal received from the Supreme Court.	



**Superior Court of the Virgin Islands  
Docket Sheet**

<b>Case #</b>	ST-2018-CV-00768	<b>Judge</b>	Hon. Renee Gumbs Carty
<b>Case Title</b>	Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.	<b>Case Type</b>	Civil - Real Property - Declaratory Judgment

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
		Appeal Received				
145	01-12-2022 10:18 AM	Notice - Notice of Compliance with Court's Order	Official		Notice of Compliance with Court's Order	Maria T. Hodge On Behalf of THE NEIGHBORHOOD ASSOCIATION, INC.
144	01-11-2022 12:05 PM	Financial - Payment Received	Official		Receipt #: 215420 Payor: THE NEIGHBORHOOD ASSOCIATION, INC., Amount: \$4,238.00	
143	01-10-2022 04:39 PM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	
141	01-10-2022 08:56 AM	Notice - Notice of Filing	Official		PLAINTIFF'S NOTICE OF FILING RE DISCOVERY SCHEDULING	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
142	01-10-2022 09:08 AM	Notice - Notice of Filing	Official		THE NEIGHBORHOOD ASSOCIATION, INC. NOTICE OF FILING PROPOSED ORDER FOR ANY AMENDMENT TO THE EXISTING SCHEDULING ORDER	Maria T. Hodge On Behalf of THE NEIGHBORHOOD ASSOCIATION, INC.
137	01-05-2022 04:37 PM	Order - Order Signed	Official		Order Signed by Judge Renee Gumbs Carty.	
140	01-10-2022 08:01 AM	Response - Reply Motion	Official		Reply to Plaintiff's Motion to Strike	Maria T. Hodge On Behalf of THE NEIGHBORHOOD ASSOCIATION, INC.
139	01-10-2022 07:57 AM	Motion - Motion Received	Official		Plaintiff's Motion to Strike Defendant's Reply Brief Re Injunction Bond	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
138	01-07-2022 08:22 AM	Notice - Notice of Filing	Official		PLAINTIFF'S NOTICE OF FILING OF PROPOSED ORDER CONCERNING THE BRIEF ON INJUNCTION BOND	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
136	01-05-2022 10:52 AM	Response - Opposition Received	Official		Reply to Plaintiff's Brief Injunction Bond	Maria T. Hodge On Behalf of THE NEIGHBORHOOD ASSOCIATION, INC.

**Superior Court of the Virgin Islands  
Docket Sheet**

<b>Case #</b>	ST-2018-CV-00768	<b>Judge</b>	Hon. Renee Gumbs Carty
<b>Case Title</b>	Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.	<b>Case Type</b>	Civil - Real Property - Declaratory Judgment

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
135	01-04-2022 11:23 AM	Brief - Briefing Letter	Official		PLAINTIFF'S BRIEF RE INJUNCTION BOND	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
134	01-03-2022 11:14 AM	Brief - Respondent Brief	Official		Respondent Brief Exhibits Attach	Maria T. Hodge On Behalf of THE NEIGHBORHOOD ASSOCIATION, INC.
133	12-16-2021 10:43 AM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	
132	12-15-2021 10:41 AM	Order - Order Signed	Official		Order Extending Temporary Restraining Order Signed by Judge Renee Gumbs Carty.	
131	12-13-2021 10:17 AM	Hearing - Record Of Proceeding	Official		Record Of Proceeding	
130	12-10-2021 04:13 PM	Notice - Notice of Filing	Official		NOTICE OF FILING CORRECTED EXHIBIT 23 FOR HEARING ON PRELIMINARY INJUNCTION	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
129	12-10-2021 04:01 PM	Notice - Notice of Filing	Official		Notice of Filing	Maria T. Hodge On Behalf of THE NEIGHBORHOOD ASSOCIATION, INC.
128	12-10-2021 09:31 AM	Notice - Notice of Filing	Official		NOTICE OF FILING ADDITIONAL EXHIBIT FOR HEARING ON PRELIMINARY INJUNCTION	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
126	12-09-2021 10:18 AM	Hearing - Record Of Proceeding	Official		Record Of Proceeding	
127	12-09-2021 11:06 AM	Notice - Notice of Filing	Official		THE NEIGHBORHOOD ASSOCIATION, INC. NOTICE OF FILING ADDITIONAL EXHIBIT FOR HEARING ON PRELIMINARY INJUNCTION	Maria T. Hodge On Behalf of THE NEIGHBORHOOD ASSOCIATION, INC.
125	12-08-2021 10:16 AM	Hearing - Record Of Proceeding	Official		Record Of Proceeding	
124	12-07-2021 04:58 PM	Notice - Notice of Filing	Official		Notice of Filing	
123	12-07-2021 04:58 PM	Notice - Notice of Filing	Official		Notice of Filing	
122	12-07-2021 02:08 PM	Notice - Notice of Filing	Official		THE NEIGHBORHOOD ASSOCIATION, INC. NOTICE	Maria T. Hodge On Behalf of THE

**Superior Court of the Virgin Islands  
Docket Sheet**

<b>Case #</b>	ST-2018-CV-00768	<b>Judge</b>	Hon. Renee Gumbs Carty
<b>Case Title</b>	Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.	<b>Case Type</b>	Civil - Real Property - Declaratory Judgment

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
					OF FILING ADDITIONAL EXHIBIT FOR HEARING ON PRELIMINARY INJUNCTION	NEIGHBORHOOD ASSOCIATION, INC.
121	12-06-2021 04:04 PM	Case Transcript - Transcript Received	Official		Transcript Request Form received	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
120	11-19-2021 04:25 PM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	
119	11-19-2021 04:25 PM	Order - Order Signed	Official		Order Signed by Judge Renee Gumbs Carty.	
118	11-19-2021 12:46 PM	Hearing - Record Of Proceeding	Official		Record Of Proceeding	
117	11-19-2021 09:17 AM	Notice - Notice of Filing	Official		THE NEIGHBORHOOD ASSOCIATION, INC. NOTICE OF FILING CORRECTED EXHIBIT O FOR HEARING ON PRELIMINARY INJUNCTION	Maria T. Hodge On Behalf of THE NEIGHBORHOOD ASSOCIATION, INC.
116	11-19-2021 08:50 AM	Response - Reply	Official		PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
113	11-19-2021 08:31 AM	Notice - Notice of Filing	Official		PLAINTIFF'S EXHIBIT LIST	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
115	11-19-2021 08:35 AM	Notice - Notice of Filing	Official		Notice of Filing	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
114	11-19-2021 08:32 AM	Notice - Notice of Filing	Official		THE NEIGHBORHOOD ASSOCIATION, INC. NOTICE OF FILING EXHIBITS FOR HEARING ON PRELIMINARY INJUNCTION	Maria T. Hodge On Behalf of THE NEIGHBORHOOD ASSOCIATION, INC.
111	11-18-2021 12:11 PM	Response - Opposition Received	Official		PLAINTIFF'S OPPOSITION TOW. DEFENDANT'S MOTION FOR TEMPORARY RESTRAINING ORDER AND	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM

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<b>Case #</b>	ST-2018-CV-00768	<b>Judge</b>	Hon. Renee Gumbs Carty
<b>Case Title</b>	Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.	<b>Case Type</b>	Civil - Real Property - Declaratory Judgment

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
					PRELIMINARY INJUNCTION	OWNERS ASSOCIATION, INC.
112	11-18-2021 12:12 PM	Response - Opposition Received	Official		MEMORANDUM IN OPPOSITION TO MOTION TO DISSOLVE OR MODIFY TEMPORARY RESTRAINING ORDER	Maria T. Hodge On Behalf of THE NEIGHBORHOOD ASSOCIATION, INC.
110	11-16-2021 12:15 PM	Hearing - Record Of Proceeding	Official		Record Of Proceeding T. R. O. Hearing.	
109	11-15-2021 08:11 PM	Motion - Motion Received	Official		Motion Received	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
108	11-15-2021 08:11 PM	Notice - Proposed Order	Official		Proposed Order	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
107	11-12-2021 05:39 PM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	
106	11-12-2021 05:39 PM	Order - Order Signed	Official		Two (2) Orders Signed by Judge Renee Gumbs Carty.	
105	11-12-2021 04:18 PM	Notice - Notice of Filing	Official		Notice of Filing	
104	11-12-2021 04:12 PM	Motion - Motion For Temporary Restraining Order Received	Official		MEMORANDUM IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION	Maria T. Hodge On Behalf of THE NEIGHBORHOOD ASSOCIATION, INC.
103	11-12-2021 03:12 PM	Motion - Motion For Temporary Restraining Order Received	Official		MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION	Maria T. Hodge On Behalf of THE NEIGHBORHOOD ASSOCIATION, INC.
102	07-13-2021 01:11 PM	Notice - Notice of Appearance	Official		NOTICE OF APPEARANCE OF DAVID F. WENTZEL, ESQ. FOR PLAINTIF	
101	03-24-2021 07:44 AM	Response - Response to Opposition	Official		Defendant's Reply to Plaintiff's Opposition to Motion for Sanctions	THE NEIGHBORHOOD ASSOCIATION, INC. Maria Tankenson Hodge, Esq.
100	03-11-2021 09:17 AM	Response - Opposition Received	Official		PLAINTIFF'S OPPOSITION TO GREAT BAY DEFENDANT'S MOTION FOR CONDOMINIUM SANCTIONS	OWNERS

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<b>Case #</b>	ST-2018-CV-00768	<b>Judge</b>	Hon. Renee Gumbs Carty
<b>Case Title</b>	Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.	<b>Case Type</b>	Civil - Real Property - Declaratory Judgment

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
						ASSOCIATION, INC. W. MARK WILCZYNSKI, ESQUIRE
99	02-21-2021 12:45 PM	Response - Reply	Official		PLAINTIFF GBCOA'S REPLY IN SUPPORT OF EMERGENCY MOTION FOR STATUS CONFERENCE AND TO MODIFY SCHEDULING ORDER	W. MARK WILCZYNSKI, ESQUIRE
98	02-20-2021 03:04 PM	Motion - Motion Received	Official		Motion Received	
97	02-20-2021 03:03 PM	Motion - Memorandum Of Law Received	Official		DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION FOR SANCTIONS AGAINST PLAINTIFF UNDER VI RULES OF CIVIL PROCEDURE 37(b)(2)(A)	
96	02-13-2021 12:37 PM	Response - Objection Received	Official		DEFENDANT'S OBJECTIONS TO PLAINTIFF'S "EMERGENCY MOTION" FOR STATUS CONFERENCE AND TO MODIFY SCHEDULING ORDER	Maria T. Hodge On Behalf of THE NEIGHBORHOOD ASSOCIATION, INC.
95	02-11-2021 04:17 PM	Motion - Emergency Motion	Official		PLAINTIFF GBCOA'S EMERGENCY MOTION FOR STATUS CONFERENCE AND TO MODIFY SCHEDULING ORDER	W. MARK WILCZYNSKI, ESQUIRE
94	02-10-2021 07:17 PM	Response - Response	Official		DEFENDANT'S RESPONSE TO PLAINTIFF'S NOTICE OF COMPLIANCE WITH COURT ORDER	Maria T. Hodge On Behalf of THE NEIGHBORHOOD ASSOCIATION, INC.
93	02-06-2021 04:33 PM	Notice - Notice of Compliance with Court's Order	Official		PLAINTIFF'S NOTICE OF COMPLIANCE WITH THE COURT'S DECEMBER 22, 2020 ORDER	
92	02-06-2021 04:12 PM	Notice - Notice Of Service	Official		PLAINTIFF'S NOTICE OF SERVICE OF SECOND SUPPLEMENTAL RESPONSES TO DEFENDANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS	W. MARK WILCZYNSKI, ESQUIRE
91	01-27-2021 09:21 AM	Notice - Notice Of Service	Official		PLAINTIFF'S NOTICE OF SERVICE OF AMENDED FIRST SUPPLEMENTAL RESPONSES	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY

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<b>Case #</b>	ST-2018-CV-00768	<b>Judge</b>	Hon. Renee Gumbs Carty
<b>Case Title</b>	Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.	<b>Case Type</b>	Civil - Real Property - Declaratory Judgment

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
					TO DEFENDANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS	CONDOMINIUM OWNERS ASSOCIATION, INC.
90	01-26-2021 03:55 PM	Notice - Notice of Entry of Official Judgment/Order			Notice of Entry of Judgment/Order	
89	01-26-2021 01:43 PM	Notice - Notice Of Service	Official		PLAINTIFF'S NOTICE OF SERVICE OF FIRST SUPPLEMENTAL RESPONSES TO DEFENDANT'S FIRST SET OF INTERROGATORIES AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
88	01-25-2021 03:54 PM	Order - Order Signed	Official		Order Signed by Judge Renee Gumbs Carty	
87	01-22-2021 11:29 AM	Notice - Notice of Filing	Official		JOINT STIPULATION FOR ENTRY OF PROTECTIVE ORDER FOR PRODUCTION OF CONFIDENTIAL INFORMATION	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC. Maria T. Hodge On Behalf of THE NEIGHBORHOOD ASSOCIATION, INC.
86	12-29-2020 03:47 PM	Response - Opposition Received	Official		DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR STATUS CONFERENCE	
85	12-29-2020 03:19 PM	Response - Opposition Received	Official		DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR STATUS CONFERENCE	
84	12-28-2020 10:23 AM	Motion - Motion Received	Official		PLAINTIFF GBCOA'S SECOND MOTION FOR STATUS CONFERENCE	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
83	12-23-2020 10:15 AM	Notice - Notice of Entry of Official Judgment/Order	Official		Notice of Entry of Judgment/Order	
82	12-22-2020 04:47 PM	Notice - Notice of Entry of Official Judgment/Order	Official		Notice of Entry of Judgment/Order	
81	12-22-2020 04:46 PM	Order - Order Signed	Official		Order Signed by Judge Renee Gumbs Carty.	

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<b>Case #</b>	ST-2018-CV-00768	<b>Judge</b>	Hon. Renee Gumbs Carty
<b>Case Title</b>	Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.	<b>Case Type</b>	Civil - Real Property - Declaratory Judgment

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
80	12-22-2020 10:10 AM	Order - Order Signed	Official		Order Signed by Judge Renee Gumbs Carty	
79	12-22-2020 08:32 AM	Notice - Notice to the Court	Official		REQUEST FOR RULING ON PENDING MOTION TO COMPEL PLAINTIFF TO RESPOND TO DEFENDANT'S WRITTEN DISCOVERY	
78	12-11-2020 10:58 AM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	
77	12-10-2020 10:56 AM	Order - Order Signed	Official		Order Signed by Judge Renee Gumbs Carty.	
76	09-28-2020 01:52 PM	Notice - Notice of Appearance	Official		Notice of Appearance	
75	08-11-2020 02:58 PM	Hearing - Record Of Proceeding	Official		Record Of Proceeding Motion Hearing.	
74	06-30-2020 02:19 PM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	
73	06-30-2020 02:05 PM	Order - Order	Official		Order signed by Judge Renee Gumbs Carty.	
72	06-10-2020 09:32 AM	Notice - Notice of Filing	Official		Defendant's notice regarding counsel's availability for rescheduling oral argument received	
71	06-08-2020 09:54 AM	Notice - Notice of Filing	Official		Defendant's Notice Regarding Counsel's Availability for Rescheduled Oral Argument Received.	
70	06-05-2020 11:43 AM	Motion - Motion Received	Official		PLAINTIFF GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.'S MOTION TO RESCHEDULE ORAL ARGUMENT ON MOTION TO DISQUALIFY WITH A PROPOSED ORDER ATTACHED	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
69	05-22-2020 10:15 AM	Service - Letter Mailed To Party	Official		Letter Mailed To Party *	
68	05-21-2020 01:12 PM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of First Amended Scheduling Order	
67	05-20-2020 11:36 AM	Order - Amended Order	Official		First Amended Scheduling Order Signed	Hon. Denise M. Francois
66	04-02-2020 08:08 AM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	
65	04-02-2020 08:03 AM	Order - Order	Official		Order Signed By Judge Renee Gumbs Carty	

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<b>Case #</b>	ST-2018-CV-00768	<b>Judge</b>	Hon. Renee Gumbs Carty
<b>Case Title</b>	Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.	<b>Case Type</b>	Civil - Real Property - Declaratory Judgment

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
64	04-01-2020 11:21 AM	Notice - Notice of Entry of Official Judgment/Order			Notice of Entry of Judgment/Order	
63	03-20-2020 11:14 AM	Order - Order	Official		Order signed by Judge Renee Gumbs Carty.	
62	03-10-2020 02:41 PM	Notice - Notice to the Court	Official		Notice to the Court of filing emails under seal as exhibit B to defendant's memorandum in opposition to motion to disqualify counsel received.	
61	03-05-2020 09:51 AM	Notice - Notice of Entry of Official Judgment/Order			Notice of Entry of Judgment/Order	
60	03-05-2020 09:47 AM	Order - Order	Official		Order signed by Judge Renee Gumbs Carty.	
59	03-03-2020 03:07 PM	Notice - Notice of Entry of Official Judgment/Order			Notice of Entry of Judgment/Order	
58	03-03-2020 03:04 PM	Order - Order	Official		Order signed by Judge Renee Gumbs Carty. IT IS HEREBY ORDERED that the motion be and the same is hereby granted, and defendant may attach to its memorandum in response to the motion for disqualification, copies of the referenced emails between attorney and clients, to be designated as exhibit, but file under seal.	
57	02-21-2020 05:56 PM	Notice - Supplemental Filing	Official		PLAINTIFF GBCOA'S SUPPLEMENT TO MOTION FOR STATUS CONFERENCE AND NOTICE OF AVAILABILITY TO ATTEND CONFERENCE FILED BY	W. Mark Wilczynski, Esq. On Behalf of GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.
56	02-18-2020 12:52 PM	Motion - Reply Received	Official		Defendant's supplemental response to plaintiff's motion for status conference received.	
55	02-10-2020 12:00 AM	Notice - Mediation Report	Official		MEDIATION REPORT RECEIVED	
54	01-29-2020 12:00 AM	Motion - Reply Received	Official		PLAINTIFF GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.'S REPLY IN SUPPORT OF MOTION TO CONSOLIDATE RECEIVED.	



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<b>Case #</b>	ST-2018-CV-00768	<b>Judge</b>	Hon. Renee Gumbs Carty
<b>Case Title</b>	Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.	<b>Case Type</b>	Civil - Real Property - Declaratory Judgment

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
53	01-15-2020 12:00 AM	Motion - Motion Received	Official		DEFENDANT'S OBJECTION TO PLAINTIFF'S MOTION FOR RECONSIDERATION, RECEIVED.	
52	12-23-2019 12:00 AM	Motion - Motion To Consolidate Received	Official		PLAINTIFF GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.'S MOTION TO, CONSOLIDATE., FILED BY W. MARK WILCZYNSKI, ESQ., WITH PROPOSED ORDER ATTACHED.	
51	12-06-2019 12:00 AM	Case Initiation - Declaration	Official		DECLARATION OF MARIA TANKENSON HODGE RECEIVED	
50	12-06-2019 12:00 AM	Case Initiation - Declaration	Official		DECLARATION OF SALVATORE CUTRONA RECEIVED	
49	12-06-2019 12:00 AM	Motion - Motion Received	Official		DEFENDANT'S OBJECTION TO PLAINTIFF'S MOTION FOR PARTIAL, SUMMARY JUDGEMENT AND REQUEST TO DENY OR DEFER DECISION ON, PLAINTIFF'S MOTION UNDER VI RULE CIVIL PROCEDURE 56 (D0 RECEIVED, FILED BY W. MARK WILCZYNSKI, ESQ. WITH PROPOSED	
48	11-21-2019 12:00 AM	Motion - Motion Received	Official		PLAINTIFF GBCOA'S REPLY IN SUPPORT OF MOTION FOR STATUS CONFERENCE, RECEIVED.	
47	11-19-2019 12:00 AM	Motion - Reply Received	Official		DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR STATUS CONFERENCE, RECEIVED.	
46	11-15-2019 12:00 AM	Motion - Motion Received	Official		PLAINTIFF GBCOA'S MOTION FOR STATUS CONFERENCE RECEIVED FROM W. MARK, WILCZYNSKI, ESQUIRE..	
45	11-12-2019 12:00 AM	Notice - Notice	Official		PLAINTIFF'S NOTICE OF SERVICE OF FIRST SUPPLEMENTAL RULE 26, DISCOVERY DISCLOSURES FILED BY W. MARK	

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<b>Case #</b>	ST-2018-CV-00768	<b>Judge</b>	Hon. Renee Gumbs Carty
<b>Case Title</b>	Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.	<b>Case Type</b>	Civil - Real Property - Declaratory Judgment

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
44	11-12-2019 12:00 AM	Notice - Notice Of Filing Received	Official		WILCZYNSKI, ESQUIRE. PLAINTIFF'S NOTICE OF FILING CORRECTED EXHIBITS TO MOTION FOR, PARTIAL SUMMARY JUDGMENT, RECEIVED.	
43	11-08-2019 12:00 AM	Notice - Notice To The Court Received	Official		THIRD PARTY DEFENDANT, MARSHALL CONSTRUCTION INC.'S NOTICE OF, SERVING IT'S FIRST SET OF INTERROGATORIES TO PLAINTIFF, COWPET BAY, EAST CONDOMINIUM OWNERS ASSOCIATION, SUBMITTED BY JENNIFER BROOKS, ESQ.	
42	11-08-2019 12:00 AM	Notice - Notice To The Court Received	Official		THIRD PARTY DEFENDANT, MARSHALL CONSTRUCTION INC.'S NOTICE OF, SERVING IT'S FIRST SET OF INTERROGATORIES TO PLAINTIFF, COWPET BAY, EAST CONDOMINIUM OWNERS ASSOCIATION, SUBMITTED BY JENNIFER BROOKS, ESQ.	
41	11-07-2019 12:00 AM	Motion - Motion Received	Official		GREAT BAY CONDOMINIUM OWNERS ASSOCIATION'S MOTION FOR PARTIAL, SUMMARY JUDGMENT RECEIVED.	
40	10-30-2019 12:00 AM	Motion - Reply Received	Official		PLAINTIFF GBCOA'S REPLY IN SUPPORT OF THE MOTION FOR PARTIAL SUMMARY, JUDGMENT RECEIVED.	
39	08-23-2019 12:00 AM	Notice - Notice	Official		PLAINTIFF GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.'S NOTICE, OF COUNSEL'S AVAILABILITY FOR HEARING FILED BY W. MARK WILCZYNSKI,, ESQUIRE.	
38	08-23-2019 12:00 AM	Notice - Notice	Official		DEFENDANT'S NOTICE REGARDING COUNSEL'S AVAILABILITY FOR HEARING,, RECEIVED.	

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<b>Case #</b>	ST-2018-CV-00768	<b>Judge</b>	Hon. Renee Gumbs Carty
<b>Case Title</b>	Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.	<b>Case Type</b>	Civil - Real Property - Declaratory Judgment

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
37	08-22-2019 12:00 AM	Motion - Reply Received	Official		PLAINTIFF GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.'S REPLY IN SUPPORT OF MOTION TO DISQUALIFY COUNSEL RECEIVED.	
36	08-02-2019 12:00 AM	Case Initiation - Memorandum	Official		DEFENDANT'S MEMORANDUM IN OPPOSITION TO MOTION TO DISQUALIFY COUNSEL, RECEIVED.	
35	08-02-2019 12:00 AM	Motion - Reply Received	Official		DEFENDANT'S REPLY TO PLAINTIFFS OPPOSITION TO DEFENDANT'S MOTION, TO COMPEL RECEIVED.	
34	07-29-2019 12:00 AM	Motion - Motion Received	Official		MOTION FOR LEAVE TO FILE CONFIDENTIAL EMAILS UNDER SEAL FILED BY, MARIA TANKENSON HODGE, ESQUIRE	
33	07-23-2019 12:00 AM	Motion - Motion Received	Official		PLAINTIFF GBCOA'S MOTION TO DISQUALIFY COUNSEL RECEIVED.	
32	07-23-2019 12:00 AM	Case Initiation - Opposition To Motion Received	Official		PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO COMPEL, FILED BY, W. MARK WILCZYNSKI, ESQUIRE PROPOSED ORDER ATTACHED.	
31	07-05-2019 12:00 AM	Case Initiation - Memorandum	Official		DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION TO COMPEL INTERROGATORY, ANSWERS AND TO COMPEL PRODUCTION OF RESPONSIVE DOCUMENTS RECEIVED.	
30	07-05-2019 12:00 AM	Motion - Motion Received	Official		MOTION TO COMPEL PLAINTIFF TO RESPOND TO WRITTEN DISCOVERY, FILED BY, MARIA TANKENSON HODGE, ESQUIRE	
29	07-05-2019 12:00 AM	Case Initiation - Miscellaneous	Official		CERTIFICATE OF COUNSEL MARIA TANKENSON HODGE RECEIVED.	
28	07-02-2019 12:00 AM	Motion - Reply Received	Official		PLAINTIFF GBCOA'S REPLY IN SUPPORT OF MOTION TO	

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<b>Case #</b>	ST-2018-CV-00768	<b>Judge</b>	Hon. Renee Gumbs Carty
<b>Case Title</b>	Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.	<b>Case Type</b>	Civil - Real Property - Declaratory Judgment

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
27	06-20-2019 12:00 AM	Response - Opposition Received	Official		MODIFY SCHEDULING, PLAN ORDER FILED BY W. MARK WILCZYNSKI, ESQ. WITH PROPOSED ORDER, ATTACHED	
26	06-19-2019 12:00 AM	Motion - Motion Received	Official		OPPOSITION TO MOTION TO AMEND SCHEDULING ORDER ATTACHED WITH, EXHIBITS FILED BY MARIA TANKENSON HODGE, ESQ.	
25	05-28-2019 12:00 AM	Notice - Notice Of Filing Received	Official		PLAINTIFF GBCOA'S MOTION TO MODIFY SCHEDULING ORDER FILED BY, W. MARK WILCZYNSKI, ESQ. WITH MODIFIED SCHEDULING PLAN ATTACHED	
24	05-06-2019 12:00 AM	Notice - Notice Of Service	Official		DEFENDANT'S OBJECTION TO PLAINTIFF'S UNTIMELY INTERROGATORIES AND, REQUESTS FOR PRODUCTION OF DOCUMENTS RECEIVED.	
23	05-06-2019 12:00 AM	Notice - Notice Of Service	Official		PLAINTIFF'S NOTICE OF SERVICE OF RESPONSE TO DEFENDANT'S FIRST SET, OF INTERROGATORIES FILED W. MARK WILCZYNSKI, ESQUIRE...	
22	04-30-2019 12:00 AM	Notice - Notice Of Service	Official		PLAINTIFF'S NOTICE OF SERVICE OF RESPONSE TO DEFENDANT'S FIRST REQUEST, FOR PRODUCTION OF DOCUMENTS FILED BY W.MRK WILCZYNSKI,	
21	04-02-2019 12:00 AM	Notice - Notice Of Service	Official		PLAINTIFF'S NOTICE OF SERVICE OF FIRST SET OF DISCOVERY REQUESTS TO, DEFENDANT FILED BY W. MARK WILCZYNSKI, ESQUIRE..	
					NOTICE OF SERVICE OF DEFENDANTS' FIRST REQUEST FOR PRODUCTION OF, DOCUMENTS TO PLAINTIFF FILED BY MARIA	

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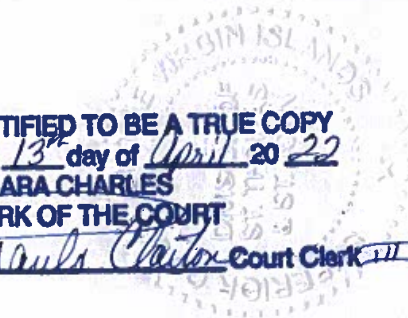
<b>Case #</b>	ST-2018-CV-00768	<b>Judge</b>	Hon. Renee Gumbs Carty
<b>Case Title</b>	Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.	<b>Case Type</b>	Civil - Real Property - Declaratory Judgment

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
					TANKENSON HODGE, ESQ.	
20	04-02-2019 12:00 AM	Notice - Notice Of Interrogatories Received	Official		NOTICE OF SERVICE OF DEFENDANTS' FIRST SET OF INTERROGATORIES TO, PLAINTIFF FILED BY MARIA TANKENSON HODGE, ESQ.	
19	03-01-2019 12:00 AM	Notice - Notice Of Service	Official		PLAINTIFF'S NOTICE OF SERVICE OF RULE 26 INITIAL DISCOVERY, DISCLOSURES FILED BY W. MARK WILCZYNSKI, ESQUIRE	
18	02-28-2019 12:00 AM	Notice - Notice Of Service Of Discovery Received	Official		NOTICE OF SERVICE OF RULE 26(a) INITIAL DISCLOSURE STATEMENT OF, DEFENDANT, THE NEIGHBORHOOD ASSOCIATION, INC., RECEIVED.	
17	02-26-2019 12:00 AM	Action - File Returned To Clerk's Office	Official		FILE RETURNED TO THE CLERK'S OFFICE	
16	02-26-2019 12:00 AM	Notice - Notice Of Entry	Official		NOTICE OF ENTRY OF ORDER, 02/25/2019, W. MARK WILCZYNSKI, ESQUIRE, MARIA TANKENSON HODGE, ESQUIRE	
15	02-25-2019 12:00 AM	Order - Order Signed	Official		ORDER SIGNED BY JUDGE RENEE GUMBS CARTY.	
14	02-14-2019 12:00 AM	Notice - Notice Of Filing Received	Official		NOTICE OF FILING RECEIVED FILED BY CHARLES S. RUSSELL, JR., ESQUIRE	
13	02-12-2019 12:00 AM	Notice - Discovery Received	Official		JOINT DISCOVERY AND SCHEDULING PLAN FILED BY W. MARK WILCZYNSKI,, ESQ. AND MARIA TANKERSON HIDGE, ESQ.	
12	01-08-2019 12:00 AM	Answer - Answer	Official		ANSWER RECEIVED	
11	12-20-2018 12:00 AM	Service - Return Of Service	Official		RETURN OF SERVICE FOR SUMMONS RETURNED SERVED ON LINDA QUETEL, AFFIDAVIT OF SERVICE ATTACHED.	
10	12-10-2018 12:00 AM	Action - File Forwarded To Judge's Chambers	Official		FILE FORWARDED TO JUDGE'S CHAMBER	
9	12-10-2018 12:00 AM	Case Initiation - Case File Received By Jury Trial	Official		Case File Received By Jury Trial Division	

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<b>Case #</b>	ST-2018-CV-00768	<b>Judge</b>	Hon. Renee Gumbs Carty
<b>Case Title</b>	Great Bay Condominium Owners Association, Inc. v. The Neighborhood Association, Inc.	<b>Case Type</b>	Civil - Real Property - Declaratory Judgment

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
		Division				
8	12-10-2018 12:00 AM	Financial - Fee Received	Official		FEE RECEIVED, RECEIPT # - 00178941	
7	12-06-2018 12:00 AM	Case Initiation - Case Sent From Non-Jury To Jury	Official		CASE SENT FROM NON-JURY TO JURY	
6	12-06-2018 12:00 AM	Action - Direct Judge Assignment	Official		DIRECT JUDGE ASSIGNMENT Hon. Renee Gumbs Carty RGC	
5	12-06-2018 12:00 AM	Service - Summons Issued	Official		21 DAY SUMMONS ISSUED TO THE NEIGHBORHOOD ASSOCIATION, INC.	
4	12-06-2018 12:00 AM	Initiating Document - Docket Letter Processed	Official		DOCKETING LETTER AND NOTICE OF JUDGE ASSIGNMENT ISSUED TO THE CLERK	
3	12-05-2018 12:00 AM	Initiating Document - Civil Complaint	Official		Converted Claims	
2	12-05-2018 12:00 AM	Financial - Filing Fee Assess	Official		FILING FEE ASSESSED	
1	12-05-2018 12:00 AM	Initiating Document - Complaint	Official		COMPLAINT AND SUMMONS FILED BY W. MARK WILCZYNSKI, ESQ., CASE INFORMATION AND LITIGANT DATA FORM FILED BY W. MARK WILCZYNSKI, ESQ.	


  
**CERTIFIED TO BE A TRUE COPY**  
 This 13<sup>th</sup> day of April, 2022  
**TAMARA CHARLES**  
**CLERK OF THE COURT**  
 By Sauls Carter Court Clerk III

**FILED**

April 11, 2022 04:04 PM  
ST-2018-CV-00768  
TAMARA CHARLES  
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.,	)	CASE NO. ST-18-CV-768
	)	
Plaintiff,	)	
v.	)	ACTION FOR DECLARATORY JUDGMENT, TO CANCEL DEED AND TO QUIET TITLE
THE NEIGHBORHOOD ASSOCIATION, INC.,	)	
	)	
Defendant.	)	<u>2022 VI Super 41U</u>

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**CARTY, RENÉE GUMBS, Judge**

**MEMORANDUM OPINION**

¶1 **THIS MATTER** came on for successive hearings on November 19, 2021, and December 8, 9, and 13, 2021, on Defendant's, The Neighborhood Association, Inc. ("NA"), "Emergency Motion for Temporary Restraining Order and Preliminary Injunction" filed on November 12, 2021. Plaintiff, Great Bay Condominium Owners Association, Inc. ("Great Bay"), filed its "Motion to Dissolve or Modify Temporary Restraining Order" and the pertinent exhibits on November 15, 2021. Defendant filed its response on November 18, 2021. NA sought to enjoin Great Bay from demanding payment of special assessments fees incurred from 2017 to 2021 for a

restaurant and lounge on the premises of the Ritz-Carlton Hotel, St. Thomas, Virgin Islands. Under the Declaration of Condominium and its amendments, Commercial Unit-1 (hereinafter referred to as "CU-1," the "lounge," or "Grand Palazzo Club"), which operated as the Grand Palazzo Club, is a restaurant/lounge created for the exclusive use of NA members, who are the owners of two-bedroom suites located in the Gardenia and Heliconia Buildings. On October 22, 2021, NA members were collectively assessed over \$1 million in maintenance fees, late charges, and interest. To fully understand the nature of Defendant NA's request for injunctive relief, the Court must first start with the underlying claims of the Complaint.

¶2 In December 2018, Great Bay filed an action against NA seeking to cancel the deed and to quiet title; and requesting declaratory judgment. On September 20, 2017,<sup>1</sup> NA conveyed a condominium deed to Great Bay for Commercial Unit-1. This deed conveyance from Salvatore M. Cutrona, Sr., NA's President, to Abigail Chung, then-Vice-President of Great Bay, embodied the transfer of CU-1, located on the fifth floor of Building G, Gardenia, to Great Bay. Great Bay refused to accept the deed and denied any conveyance or obligations to pay the maintenance fees and expenses associated with CU-1. Great Bay has demanded that NA continue, despite the deed conveyance, to pay all expenses associated with the restaurant/lounge.

¶3 Prior to and during this action, Great Bay assessed NA for the CU-1 maintenance fees for the years 2017, 2018, and 2019.<sup>2</sup> Those amounts remained unpaid. Then on October 22, 2021, while the underlying action remains pending as to the validity of the deed and its conveyance,

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<sup>1</sup> The Virgin Islands experienced two Category 5 storms, Hurricanes Irma and Maria, on September 6, and September 20, 2017, respectively. See National Oceanic and Atmospheric Administration and National Weather Service, "National Hurricane Center Tropical Cyclone Report: Hurricane Irma" published on September 21, 2021, at 25, and "National Hurricane Center Tropical Cyclone Report: Hurricane Maria" published February 14, 2019, at 30.

<sup>2</sup> Plaintiff's Exhibit 13 at 2.



Great Bay disseminated invoices in excess of \$1 million levied directly against NA members for the amounts owed for the years 2017 through 2021 triggering the request for the temporary restraining order and preliminary injunction.

¶4 The Court issued the Temporary Restraining Order (“TRO”) on November 12, 2021, and held a status conference on November 16, 2021. After hearing preliminary arguments at the status conference, the Court orally denied the motion to dissolve or modify the TRO and proceeded towards a preliminary injunction hearing.

¶5 At the hearings, the Court heard the sworn testimonies of Salvatore M. Cutrona Sr., NA’s President, Marsha Leighton-Herrmann, Director of Finance for the Ritz-Carlton Club St. Thomas, Abigail Chung, President of Great Bay Condominium Owners Association, and Thomas Doyle, Treasurer of Great Bay Condominium Owners Association. For the following reasons, the Court will grant the motion for injunctive relief due to a clear showing that relief is warranted when the factors are considered and weighed.

**I. Brief factual background.**

¶6 NA sought to enjoin Great Bay from unilaterally assessing the 288 NA members for the full amount of five years of past common charges Great Bay has assessed for the commercial unit. Great Bay Condominium Owners Association consists of 1,260 residence interests. There are 80 units, each possessing 12 deeded fractional interests. This portion makes up 960 interests. In addition, there are 288 deeded fractional interests situated in two (2) buildings, Gardenia (“Building G”) and Heliconia (“Building H”). NA is comprised of the two (2) buildings, but NA owners are also members of Great Bay. Of the 288 fractional interests belonging to NA, forty-nine

percent (49%) are owned by the Ritz-Carlton and the Marriott Vacation Club Trust.<sup>3</sup> The remaining fifty-one percent (51%) are individual owners. The remaining twelve (12) interests are associated with CU-1. CU-1 was initially designated as a food and beverage service with a lounge area for the exclusive use of residence interest owners of two-bedroom suites in Buildings G and H. The suites in both buildings were constructed with galley kitchens and no dining rooms, unlike the other larger units at the Ritz-Carlton with larger kitchens and dining areas. Thus, CU-1 was created solely for the purpose of having a food and beverage service and lounge to accommodate these suite owners.

¶7 On May 10, 2002, the Ritz-Carlton, through a Declaration of Condominium, established the Great Bay Condominium Owners Association, Inc., pursuant to Chapter 33, Title 28 of the Virgin Islands Code and recorded the Declaration in the Office of the Recorder of Deeds for the District of St. Thomas/ St. John. Great Bay, a not-for-profit association, is located on the property of the Ritz-Carlton Hotel. NA is also a not-for-profit association on the premises. On the same day, the Supplementary Declaration of Condominium was also recorded and created the Residence Interests<sup>4</sup> in the Condominium. During the ensuing months, several amendments to both declarations were created to meet the needs of the interested parties. The First and Second Amendments to the Declaration became effective on July 5, 2002, and December 6, 2002, respectively. There were also First and Second Amendments to the Supplementary Declaration which became effective on December 6, 2002, and January 7, 2004, respectively.

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<sup>3</sup> See Plaintiff's Motion to Dissolve or Modify Temporary Restraining Order at 2.

<sup>4</sup> See November 19, 2021, Hearing Transcript at 16, lines 1-8 (defining the residence interests as deeded fractional interests. Since the condominiums are not full ownership, each unit has twelve (12) deeded fractional interests that provide owners twenty-one (21) days of use on a rotating basis.).

¶8 On November 15, 2005, Ritz-Carlton signed the Third Amendment to the Supplementary Declaration and the Fourth Amendment to the Declaration, which both amendments created NA and the plans to refurbish Building H which would house twelve two-bedroom suites. On June 6, 2006, with the Fifth Amendment to the Declaration, Building G was conveyed from the Ritz-Carlton hotel to the interval ownership Ritz-Carlton Destination Club program, thus adding Building G to Great Bay. Building G added twelve more two-bedroom suites to NA and created the Commercial Unit-1 on the top floor. The conflicts and controversy in this matter are rooted in these amendments.

¶9 NA was formed for the sole purpose of taking ownership, operation, and maintenance of CU-1. Although NA was formed in November 2005, it was not until 2006 when NA began to operate and pay for CU-1. Two years later the Ritz-Carlton formally conveyed the deed to CU-1 to NA on December 20, 2008. From 2006 through 2016, only NA members were responsible for common area charges associated with this lounge; i.e., only 288 members of the 1,260 were responsible. These charges were assessed by Great Bay to NA and in turn, NA issued individual assessments for these charges to its members. These CU-1 common charge assessments were in addition to the individual assessments each condominium owner is subject to by Ritz-Carlton for their suites.

¶10 The underlying issue here is whether the conveyance of the Condominium Deed dated September 20, 2017, from NA to Great Bay is considered a valid conveyance, thus determining whether the October 22, 2021 invoices assessed to each NA member was a proper assessment. Despite an absence of a ruling in the underlying action, coupled with Great Bay's outright rejection of the deed conveyance and continued accrual of maintenance fees, Great Bay unilaterally

proceeded to issue, on October 22, 2021, invoices to all 288 NA members demanding payment for all common charges assessed from September 2017 through October 2021. NA alleges their conveyance of the deed to Great Bay on September 20, 2017, relieved NA members of the duty to pay common area charges on the building for those years and consequently Great Bay, as the owner, is entirely responsible for the maintenance of the lounge and the outstanding costs.

¶11 In their October 22, 2021 demand letter, Great Bay required payment in full for the five years of past assessments by November 22, 2021, stating: “[i]f the invoice is not paid in full within 30 days the Members Association will take further action as provided for in the Declarations.” The letter directed NA members to refer to the Declarations and Amendments on the Ritz-Carlton’s webpage.

¶12 To support their respective positions, each party introduced several exhibits consisting of the Declaration, Supplementary Declaration, several amendments, Articles of Incorporation and Bylaws for each association, and Condominium Deeds. The Declarations and Amendments set forth several options Great Bay may exercise to address delinquent assessments, including locking members out of their condominium units and preventing them from accessing all amenities of the Ritz-Carlton premises until the assessments are paid in full. The regular annual assessments were issued by the Ritz-Carlton on October 1, 2021, with a deadline of November 2, 2021, payment options, and other punitive measures the Ritz-Carlton may take to address any delinquent member, including a “lock-out” option. As stated *supra*, three weeks later the invoices in dispute were issued to each NA member at approximately \$3,500 per member, totaling over \$1 million, and were due by November 22, 2021.

¶13 Upon receiving this second notice, NA filed the instant motion for a temporary restraining order and preliminary injunction. The Court granted the temporary restraining order on November 12, 2021. On November 14, 2021, Great Bay issued a Unanimous Written Consent directing the third-party billing company, Concord Servicing Corporation, to rescind the invoices issued on October 22, 2021.<sup>5</sup> However, despite inquiries, Great Bay did not refund any NA members who had already paid the assessments.<sup>6</sup> On December 13, 2021, the Court issued a bench ruling granting the preliminary injunction.

**II. Analyzing the four factors of determining whether to issue a preliminary injunction in favor of the Defendant.**

¶14 When determining whether to issue a preliminary injunction, the trial court considers the following factors on a sliding-scale basis: 1) the probability of success on the merits; 2) the threat of irreparable harm if the injunction is denied; 3) the balance of the harm between the parties if granted; and 4) the public interest.<sup>7</sup> The Supreme Court, in *Yusef v. Hamed*, 59 V.I. 841, 854 (V.I. 2013), concluded that the soundest rule for the Virgin Islands is “a sliding-scale test, wherein a strong showing on one factor may decrease the weight assessed to other factors” allowing an injunction where “the probability of success on the merits is low if the Court determines that the moving party’s likelihood of irreparable harm is great and the nonmoving party’s likelihood of irreparable harm is very low.”

**A. NA has shown a reasonable probability of success on the merits.**

¶15 First, the Court must analyze NA’s probability of success on the merits. “When addressing

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<sup>5</sup> See Defendant’s Exhibit N-1, Unanimous Written Consent in Lieu of a Special Meeting of the Directors of Great Bay Condominium Owners Association, Inc.

<sup>6</sup> See December 9, 2021, Hearing Transcript at 196 lines 12-13.

<sup>7</sup> *3RC & Co. v. Boynes Trucking Sys., Inc.* 63 V.I. 544, 553 (V.I. 2015).

a reasonable probability of success on the merits, the movant must show that it has ‘a reasonable chance, or probability, of winning,’ not that it will actually prevail on the merits at trial.”<sup>8</sup> The movant must introduce evidence making out a *prima facie* case.<sup>9</sup> Here, NA has adequately validated its request for injunctive relief by showing pursuant to the Declaration of Condominium and its relevant Amendments, which govern both Great Bay and NA, and through application of Title 28 of the Virgin Islands Code, that Great Bay has improperly assessed the common charges of CU-1.

¶16 The pertinent Amendments to this motion are the Third Amendment to the Supplementary Declaration and the Fourth and Fifth Amendments to the Declaration. As stated *supra*, on November 15, 2005, the Third Amendment to the Supplementary Declaration and the Fourth Amendment to the Declaration established the Neighborhood Association in conjunction with the construction proposal for Building H, which would house twelve two-bedroom suites and require these residence owners to be members of the newly established Neighborhood Association.

¶17 On June 6, 2006, the Fifth Amendment to the Declaration added Building G to Great Bay, including twelve more two-bedroom suites and CU-1 on the fifth floor. The Fifth Amendment also detailed NA’s ownership and responsibilities regarding CU-1.

¶18 In December 2008, Ritz-Carlton<sup>10</sup> (also referred to as the “Developer”), conveyed a condominium deed to CU-1 to NA. From 2008 until 2013, CU-1 provided food and beverage services and was used solely for the use and enjoyment of NA members and occupants in Buildings G and H. After being operated and used exclusively by NA for a period of five years, NA renovated

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<sup>8</sup> *SBRMCOA, LLC v. Morehouse Real Estate Invs., LLC*, 62 V.I. 168, 187 (V.I. Super Ct. 2015).

<sup>9</sup> *Punnett v. Carter*, 621 F.2d 578, 583 (3d Cir. 1980).

<sup>10</sup> Sometimes referred to as the “Declarant.”

CU-1 from a food and beverage service to a fully operational restaurant, the Grand Palazzo Club. On August 8, 2013, NA and Great Bay entered into a "Residence Owners Agreement" ("ROA"), which allowed for members of Great Bay to access the Grand Palazzo Club and dine there for a fee and, in turn, Great Bay would assess NA for the charges of CU-1, but Great Bay would pay these charges.<sup>11</sup> This agreement was amended twice on November 1, 2014, and November 1, 2015, both amendments modifying the agreement to allow for Great Bay members to have more access to the lounge and its amenities, and modified the payment of the CU-1 assessments.<sup>12</sup> The First Amendment modified the ROA to allow for Great Bay members to participate in the breakfast service, receive a fifteen percent (15%) discount on menu prices for meals and beverage services, and access wine storage lockers without charge. Additionally, NA agreed to pay Great Bay a monthly aggregate equal to fifteen percent (15%) of the charges incurred by the members and their guests during the month for all meals and beverage services.

¶19 Under the Second Amendment, the ROA was modified again and charged Great Bay members for breakfast services at the same rate NA members paid and additionally changed the discount for members, from fifteen percent (15%) on beverage services to ten percent (10%). Most importantly, the Second Amendment modified the agreement where Great Bay would pay an annual fee for access to the lounge in an amount equal to half of the annual dues obligation of NA to Great Bay with respect to CU-1.<sup>13</sup>

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<sup>11</sup> See Plaintiff's Exhibit 15, Residence Owners Agreement dated August 8, 2013.

<sup>12</sup> See Plaintiff's Exhibit 16, First Amendment to the Residence Owners Agreement dated November 1, 2014, and Exhibit 17, Second Amendment to the Residence Owners Agreement, dated November 1, 2015.

<sup>13</sup> See *Id.*

¶20 This arrangement between NA and Great Bay continued until the end of 2016.<sup>14</sup> In 2016, NA alleges they were in the process of transferring ownership to Great Bay and assisting with transition of the operation of the Grand Palazzo Club to keep it functional as a restaurant.<sup>15</sup> Great Bay disputes this; however, acknowledged these discussions in their Complaint in a different, but related case, ST-2019-CV-00650.<sup>16</sup> Neither party provided documentation to support either contention; however, on September 20, 2017, NA signed a deed conveying CU-1 to Great Bay, which lead to the filing of the Complaint.

¶21 Great Bay rejects the deed conveyance and contends discovery is needed to determine the validity of the deed, as Mr. Cutrona, Sr. created five originals of the deed. The five originals were distributed accordingly: a copy sent via Fed Ex was mailed to Abigail Chung, then-Vice-President of Great Bay in 2017, a copy sent to John Doyle, then-President of Great Bay, a copy retained by Mr. Cutrona, Sr., a copy transmitted to NA's then-Secretary Marc Betesh, and a final copy was sent to NA's counsel.

¶22 On March 6, 2018, NA's counsel recorded the deed and transmitted a copy of the recorded deed on March 23, 2018, to Great Bay's counsel. Not only does Great Bay move to cancel the deed as an improper conveyance, but they also question the validity of the deed because of what appears to be different signatures on five originals. Mr. Cutrona, Sr. testified that he created five duplicate copies, containing identical language.<sup>17</sup> Title 28 Virgin Islands Code § 132 provides: "[t]he record of any document in the office of the recorder of deeds, *or a copy of such record*, shall be admissible in evidence in any court in the Virgin Islands." In the context of a duplicate deed, the federal rules

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<sup>14</sup> November 19, 2021, Hearing Transcript at 23 lines 7-25 and 24 lines 1-23.

<sup>15</sup> *Id.*

<sup>16</sup> See Plaintiff's Exhibit 13 at 5.

<sup>17</sup> December 13, 2021, Hearing Transcript at 82 lines 15-25 and 83 lines 1-25 and 84 lines 1-4.



of evidence provide: “a duplicate is admissible in the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.” See *Enfield Green Homeowners Ass’n v. Francis*, 340 F.Supp.2d 590, 594 n.6 (D.V.I. 2004). The Court finds there is no genuine issue raised as to the authenticity of the original as the five duplicates sent to members of both parties are identical, but for slight differences in the signatures. Still, Great Bay argues discovery is needed to determine whether there was a proper conveyance.

¶23 Since the conveyance on September 20, 2017, NA has not paid common assessment dues on CU-1. NA argues Great Bay had an obligation to accept the deed, so long as it was free of service contracts and other obligations, pursuant to the Fourth Amendment to the Declaration. Arguing, therefore, NA does not own the Grand Palazzo Club and does not owe these assessments. Great Bay argues the conveyance is not valid because they did not accept the deed, had no obligation to accept the deed, and regardless of ownership, NA’s members are responsible for the CU-1 assessments per the Declaration. The Third Amendment to the Supplementary Declaration and the Fourth and Fifth Amendments to the Declaration provide enough context to ascertain whether these invoices were assessed properly and should be enjoined.

**i. Legal Analysis**

¶24 The Supreme Court of the Virgin Islands has held that a condominium association’s by-laws and governing documents are to be construed “according to the general rules governing the construction of statutes and contracts.” See *Weary v. Long Reef Condominium Association*, 57 V.I. 163, 170 (V.I. 2012) (citing *Singh v. Singh*, 9 Cal Rptr.3D 4, 27-28 (Cal Ct.App.2004)). When the governing documents of condominium associations are clear and unambiguous, the Court must

follow their plain meaning. *See Id.* at 169. “To determine whether a contract is ambiguous, we resort to principles of contract interpretation, keeping in mind that our primary purpose is to ascertain and give effect to the parties’ objective intent.” *Phillip v. Marsh-Monsanto*, 66 V.I. 612, 624 (V.I. 2017). The Court cannot “rewrite [the Declaration or Amendments] by looking to evidence outside the four corners of the [Declaration or Amendments] to determine the intent of the parties.” *Id.* at 628.

¶25 Here, the Third Amendment to the Supplementary Declaration established NA as a member of Great Bay and its responsibilities for CU-1. It also lays the premise as to why both parties dispute the interpretation of certain provisions of the Declaration. The Third Amendment, paragraph four (4) states, in pertinent part:

“The twelve (12) Residences which are the subject of this amendment are Two Bedroom Suites and, as such, all Owners of Residence Interests therein shall in addition to being Members of the Condominium Association,<sup>18</sup> be mandatory members of the Neighborhood Association, whose contemplated sole purpose shall be to own and operate a Commercial Unit.... More particularly, and in accordance with the separate organizational and governing documents of the Neighborhood Association, its members shall control the Neighborhood Association and be responsible for all costs and expenses related to the ownership and operation of the Commercial Unit owned by it, including but not limited to any services that it may elect to provide.”

NA premises its entire argument on ownership. NA points to this language to emphasize that the responsibility for the assessments is only for commercial units which NA owns.

¶26 NA’s Bylaws support NA’s contention. The Bylaws provide for the Powers of the Board<sup>19</sup> which gives the Board the authority to “purchase, lease or accept conveyance of the Lounge

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<sup>18</sup> The “Condominium Association” is referring to Great Bay. *See infra* at 11.

<sup>19</sup> NA’s Bylaws Article IV, § 3.

without the vote of the Members,”<sup>20</sup> ... “and convey property,”<sup>21</sup> as well as the power “to make and collect assessments, and use and expend said assessments to carry out the purposes and powers of the [Neighborhood] Association.”<sup>22</sup> The Board is elected by the members of the Association and is responsible for carrying out the affairs of the Association. Within NA’s own Bylaws, the Board has the ability to convey CU-1. Hence, they argue, if NA no longer owns it, they cannot and should not be held responsible for its upkeep. To the contrary, Great Bay contends that this same language in the Third Amendment shows that the suite owners are exclusively responsible for the assessments. The above-quoted language and similar language are reiterated throughout the Declaration, but the Court finds the Fourth and Fifth Amendments to the Declaration provide more clarity to the plain meaning of the Declaration.

¶27 The Fourth Amendment to the Declaration, paragraph five (5), effective November 15, 2005, further specifies the rights and duties of NA. The Fourth Amendment provides, in pertinent part:

“The Declarant or an Owner of a Commercial Unit may also convey a Commercial Unit, or any subdivision thereof in the case of Declarant, to the Association for no or nominal consideration without the consent of any other Owner or the Association, and the Association shall be obligated to accept such conveyance. A Commercial Unit will only be transferred to the Association free of service contracts or other obligations other than as provided in the Declaration, By-laws and Rules and Regulations, all as amended from time to time.”

NA relies heavily on this Amendment to support their argument that not only did NA have the authority to convey the deed, but also Great Bay had the duty to accept the deed, therefore Great Bay owns CU-1. Conversely, Great Bay argues the “association” being referred to in the Fourth

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<sup>20</sup> *Id.* at §3 (c).

<sup>21</sup> *Id.* at §3 (l).

<sup>22</sup> *Id.* at §3 (d).

Amendment refers to NA. Considering Great Bay's interpretation, it would mean NA can only convey the unit back to themselves.

¶28 If the Court were to adopt Great Bay's interpretation of the Fourth Amendment, it would read as follows:

“[t]he Declarant or an Owner of a Commercial Unit may also convey a Commercial Unit, or any subdivision thereof in the case of Declarant, to the [Neighborhood] Association for no or nominal consideration without the consent of any other Owner or the [Neighborhood] Association, and the [Neighborhood] Association shall be obligated to accept such conveyance.”

This reading would imply that the Owner, who at the time was the Neighborhood Association by virtue of this Amendment, would be able to convey the unit they own back to themselves without consent. This argument seems illogical and undermines the plain reading of the Declaration.

¶29 The Court interpreted that the Association referred to in the Fourth Amendment is Great Bay. Each set of governing documents defines which association is being referred to. Throughout the Declaration and the Supplementary Declaration, and their amendments, Great Bay is referred to as the “Condominium Association,” the “Association,” and the “Members Association,” whereas the Neighborhood Association is exclusively referred to as “Neighborhood Association.” The Declaration defines the “Members Association” as: “Great Bay Condominium [Owners] Association, Inc., a not-for-profit Virgin Islands corporation established by Declarant ... hereinbefore and hereinafter the ‘Members Association’”.<sup>23</sup> This language conveys to the Court that the Declaration, and its amendments, are specifically tailored to the duties and obligations of Great Bay, except for where in the amendments there are defined obligations of NA. For example,

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<sup>23</sup> The Condominium Declaration ¶13, at 13.

in the Third Amendment to the Supplementary Declaration Section four (4), paragraph one (1) describes Great Bay as both the Condominium Association and the Members Association, stating:

“[A]ll Owners of Residence Interests therein shall in addition to being Members of the Condominium Association, be mandatory members of the Neighborhood Association...”<sup>24</sup>

and then,

“[i]n addition to the lien in favor of the Members Association against each Residence or Residence interest, ... [these members are also] subject to a lien in favor of the Neighborhood Association...”<sup>25</sup>

Whereas NA is explicitly referred to as “Neighborhood Association” both times in the amendment. The language in this amendment is consistent with the October 22, 2021 letter sent from Great Bay to NA which refers to itself as both “the Association,” and the “Members Association,” in the context of examining the Declaration.<sup>26</sup>

¶30 This proposition is further supported in NA’s Bylaws and Articles of Incorporation, which reflect the same interchanging of “Association,” and the “Members Association,”<sup>27</sup> when referring to NA in those documents which were specifically tailored to encompass NA’s duties and obligations, similar to the Declaration’s encompassing of Great Bay.<sup>28</sup> As stated, condominium associations’ declarations and bylaws are governed according to contract and statutory interpretation. When a contract is ambiguous, the court’s purpose is to ascertain and give effect to

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<sup>24</sup> Third Amendment to the Supplementary Declaration § 4, ¶1.

<sup>25</sup> Third Amendment to the Supplementary Declaration § 4, ¶2.

<sup>26</sup> Defendant’s Exhibit B, October 22, 2021, Letter from Great Bay to NA Members, at 3.

<sup>27</sup> Plaintiff’s Exhibit 8, NA’s Bylaws, at 1: “The name of the association is The Neighborhood Association, Inc. (hereinafter referred to as the “Association”).

<sup>28</sup> Plaintiff’s Exhibit 9, Declaration of Condominium, at 14 ¶13: “The operations of the Members Association shall be conducted by Great Bay Condominium [Owners] Association, Inc. a not-for-profit Virgin Islands corporation established by Declarant ... (hereinbefore and hereinafter the “Members Association”). Plaintiff’s Exhibit 9 at 33: “The name of the association shall be Great Bay Condominium Owners Association, Inc. (sometimes hereinafter the “Association”)....

the parties' objective intent and not the subjective intentions of each party. *See Phillip v. Marsh-Monsanto*, at 625. "When a contract uses different language in proximate and similar provisions, we commonly understand the provisions to illuminate one another and assume that the parties' use of different language was intended to convey different meanings." *Streibich v. Underwood*, 54 V.I. 488 (V.I. 2021) (quoting *Penncro Assocs. V. Spring Spectrum, L.P.*, 499 F.3d 1151, 1156-57 (10th Cir. 2007)). When considering the text of the documents as a whole and the objective intent of the parties, it can be reasonably interpreted that the general "Association" referred to in each document can only mean the association as defined in that particular document, unless specified otherwise. Under the plain meaning of the Declaration and evidenced by Great Bay's letter and the Developer's intent to explicitly refer to NA as the "Neighborhood Association," throughout the Declaration and NA's governing documents, it appears that the "Association" in this paragraph of the Fourth Amendment is referring to Great Bay.<sup>29</sup>

¶31 To further solidify their position, NA argues it is NA, and not the individual suite owners, who formerly owned the Grand Palazzo Club and NA was liable for assessments, therefore the individual invoices were improperly assessed. However, under NA's Articles of Incorporation and Bylaws, NA and its members are one in the same. The membership interest in NA is established at the time the deed to the suite interest is recorded with the Recorder of Deeds for St. Thomas/ St.

John.<sup>30</sup> The Articles of Incorporation, Article V, Section 4 further states:

"Membership shall be appurtenant to and may not be separated from ownership of any said Suite Interest and ownership of such Suite Interest shall be the sole qualification for membership. Membership shall automatically terminate

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<sup>29</sup> *See supra* at FN 12.

<sup>30</sup> NA's Articles of Incorporation Article V, §4.

upon sale or other disposition of title, in accordance with the provisions of the Declaration.”<sup>31</sup>

Article V, Section 5 clarifies:

“Membership in the [Neighborhood] Association may not be assigned, hypothecated or transferred in any manner except with the conveyance of a Suite Interest. Membership shall terminate upon the termination of the Declaration or upon transfer of ownership of a Suite Interest, provided the transfer is accomplished in accordance with all of the provisions of the Declaration.”<sup>32</sup>

The articles of incorporation are coherent with the longstanding practice of NA billing the members for the CU-1 assessments as NA serves as the conduit for the assessments. The issuance of direct assessments to each NA member is not pivotal, but the mere issuance of the assessments is. Although NA contends the assessments directly to NA members was improper, it is not an issue of concern because even if Great Bay had assessed NA, which they did in 2017, 2018, and 2019,<sup>33</sup> NA would have still refused to pay, which they have.

¶32 The CU-1 assessments are directly tied to ownership of CU-1; therefore, the invoices were improperly assessed as ownership has yet to be determined. The Fifth Amendment to the Declaration supports this position. The Fifth Amendment states the Ritz-Carlton conveyed CU-1 to the Neighborhood Association for the “exclusive benefit of the occupants ... of the Two Bedroom Suites...” Further specifying in paragraph five (5):

“All Owners of Residence that are designated as a Two Bedroom Suite shall, in addition to being Members of the Condominium Association, be mandatory members of the Neighborhood Association *whose sole purpose is to own and operate Commercial Unit CU-1*, which shall be conveyed by the Declarant to the Neighborhood Association and utilized for the *exclusive benefit* of the occupants from time to time of the Two Bedroom Suites, whether or not such occupants are Members of the Neighborhood Association, *and as more particularly described in*

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at §5.

<sup>33</sup> Plaintiff’s Exhibit 13 at 2.

*the organizational and governing documents of the Neighborhood Association. As a member of the Neighborhood Association, Owners of Two Bedroom Suites are responsible for all costs and expenses of the ownership and operation of Commercial Unit CU-1, including but not limited to any services that it may elect to provide.”*

Great Bay relies on this, and similar language throughout the Declaration, to argue that the assessments are proper because it is the suite owners’ responsibility to continue paying the assessments on CU-1, regardless of who owns CU-1. Great Bay uses the fact that Marriott Vacation Club Trust and the Ritz-Carlton, together, own forty-nine percent (49%) of the shares of NA and paid a portion, approximately eight (8) interests worth, of their assessments to support Great Bay’s contention suite owners are personally liable. Great Bay argues NA members are required to pay the assessments and then dispute the charges. Under paragraph nine (9) of the Declaration, “[n]o Member may withhold payment of any regular or special assessment or any portion thereof because of any dispute which may exist between that Member and the Members Association, . . . but rather each Member shall pay all assessments when due pending resolution of any dispute.”<sup>34</sup> However, the CU-1 assessments are separate and apart from the annual assessments which follow the “pay now, dispute later” process allowed for in the Declaration.<sup>35</sup> The CU-1 assessments are common assessments under Title 28 § 909, *see infra*, similar to the annual assessments, which are linked to each individual unit, (thus creating the personal liability for those assessments). The Fifth Amendment ties the personal liability of CU-1 to the operation and ownership of CU-1.

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<sup>34</sup> The Condominium Declaration ¶9, at 12.

<sup>35</sup>*Id.*



¶33 This interpretation is supported by the Developer's emphasis on the responsibility of CU-1 being connected to NA member's "exclusive benefit" in the Fifth Amendment. As the owner with exclusive control and use of the Grand Palazzo Club, NA had the responsibility for the assessments because only NA members were benefitting from the lounge; as opposed to all members of Great Bay benefitting from the other common assessments, such as maintenance fees for sidewalks and upkeep of other common facilities. However, if the conveyance of CU-1 is proper, and that issue has not been determined, then Great Bay would have the exclusive benefit of CU-1, not NA.

¶34 Yet, Ms. Chung, Great Bay's President, testified that under Great Bay's interpretation of the Declaration, NA members would be responsible for these assessments in perpetuity. She stated that the suite owners will be liable for as long as they are members of the Neighborhood Association. Further explaining, irrespective of the purported property transfer to Great Bay, "when a suite owner sells their unit, they don't have the obligation anymore."<sup>36</sup> Mr. Doyle, Great Bay's Treasurer, defended this position to a greater extent even stating that for example if a rich person purchased the Grand Palazzo Club to operate a restaurant on his own accord, NA suite owners would still be responsible for the common assessments.<sup>37</sup> This interpretation of the Declaration overlooks the language of the Fifth Amendment which signals to the Court that the responsibility for these assessments is inextricably tied to ownership of the commercial unit.

¶35 Finally, Title 28 of the Virgin Islands Code § 909 supports NA's argument that the common charges are proportional to ownership interest. Section 909 provides: "[t]he common profits of the

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<sup>36</sup> December 9, 2021, Hearing Transcript at 70, lines 12-13.

<sup>37</sup> *Id.* at 114, lines 4-17.

property shall be distributed among, and the common expenses shall be charged to, the apartment owners according to the percentage of the undivided interest in the common areas and facilities.”

¶36 Plaintiff argues that these assessments are an issue of real property as restrictive covenants running with the land; therefore, the assessments are not tied to ownership of CU-1 as NA states. The Declaration explicitly states that the provisions, including the obligation to pay annual assessments, are covenants running with the land.<sup>38</sup> However, the Fourth and Fifth Amendments, which are specific to CU-1, tie the responsibility of the CU-1 assessments to ownership by the Association as a whole. If it is later determined that the conveyance was proper and Great Bay has been declared the owner of the Grand Palazzo Club since September 20, 2017, then the logical conclusion of § 909 would be that the assessments must be distributed among all Great Bay members, and not only the 288 NA members. Therefore, the analysis depends on whether the CU-1 assessments are common assessments and which language is more germane to the issue, the amendments or the Act.

¶37 Throughout the hearings, the assessments associated with CU-1 were referred to as annual assessments, annual maintenance fees, members’ dues, and common charges. Mr. Doyle testified that all of these terms essentially had the same meaning and that they are common charges.<sup>39</sup> He specified, “[o]ne of the expenses of the [Neighborhood] Association is their share in the common expenses which is budgeted by GBCOA every year. ... CU-1 has a share in the common expenses of the Condominium ... CU-1 has an obligation to pay 18 Interests of dues to cover its share of the condominium expenses – general condominium expenses.”<sup>40</sup> When asked directly whether

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<sup>38</sup> The Condominium Declaration ¶15, at 14.

<sup>39</sup> December 9, 2021, Hearing Transcript at 110 lines 12-25 and 111 lines 1-5.

<sup>40</sup> *Id.* at 34 line 25 and 35 lines 1-13.

those CU-1 general condominium expenses were the subject of the invoices, Mr. Doyle said, “yes”.<sup>41</sup> Hence, while the ownership of CU-1 has yet to be determined, and taking into consideration the governing documents, the evidence and testimony presented, and a reading of Title 28, NA has set forth more than a *prima facie* case to show a reasonable likelihood of success on the merits.

**B. The threat of irreparable harm to NA members is likely if injunctive relief is denied.**

¶38 Next, the Court looks at the threat of irreparable harm to NA if the assessments are prematurely issued. A movant suffers irreparable harm where there is “certain and imminent harm for which a monetary award does not adequately compensate.” *Yusef v. Hamed*, 59 V.I. 841, 854 (V. I. 2013). The outstanding assessments for CU-1 are in excess of \$1 million dollars. Ms. Chung testified there was about \$760,000 in maintenance fees, \$116,000 in late fees, and \$142,000 of interest over the five-year period.<sup>42</sup> As provided for in the Declaration, one of the penalties for a delinquent owner is the management company’s ability to lockout a member from his or her residence and all Ritz-Carlton facilities. This was specified in the October 1, 2021 letter sent from Ritz-Carlton to all Great Bay members regarding the annual dues. This letter cites to Section 8.2 of the Supplementary Declaration, *Section VI. Assessments of the Affiliation Agreement*, and states:

“Members who have unpaid annual assessments, late fees and/ or interest owing to the Association, shall be ‘locked-out’ from all Ritz-Carlton Destination Clubs, including their home club in St. Thomas. ‘Lock-out’ includes no access to reserved allocations or space available reservations at any Destination Club. If you do not timely make payment of all amount due and owing for common charges, the ‘lock-out’ will be implemented and shall remain in place until all amounts due and owing, including interest and late charges, are paid in full.”

<sup>41</sup> *Id.* at 35 line 18.

<sup>42</sup> December 13, 2021, Hearing Transcript at 23, lines 22-25.

Ms. Marsha Leighton-Herrmann, Director of Finance for the Ritz-Carlton Club St. Thomas, testified that this is a standard letter that the management company uses; originally drafted in 2010 and sent to members annually ever since.<sup>43</sup> In the October 22, 2021 letter sent from Great Bay to NA members regarding the additional assessments, Great Bay included language which allows Great Bay to take necessary actions, which implied their capability to lockout members from their residences.<sup>44</sup> NA contends that this option to lockout a member from their residence constitutes irreparable harm.

¶39 Great Bay's sole argument regarding "lock-out" is that they do not intend to, nor do they have the ability to lockout members. Mr. Doyle testified that the Board met in September to discuss the past due assessments.<sup>45</sup> He further stated that the Board decided that the only penalties will be monetary, and they would not implement lock-outs.<sup>46</sup> Despite this assertion, neither Mr. Doyle nor Mrs. Chung provided meeting minutes or any other documentary evidence to support such a claim. Yet, Great Bay argues only the management company has the capability to lock-out members and that the Ritz-Carlton's October 1, 2021 letter explicitly providing for a lock-out measure only applies to annual assessments. This argument is unpersuasive.

¶40 Ms. Leighton-Herrmann testified that the lock-out system is used against delinquent members and inhibits them from being able to check into their suite for their allotted time.<sup>47</sup> As the managing company for both associations, the Ritz-Carlton develops the budgets for both. The Ritz-Carlton has a contract with Concord Servicing Corporation ("Concord"), a third-party billing

<sup>43</sup> December 8, 2021, Hearing Transcript at 23, lines 2-6.

<sup>44</sup> Defendant's Exhibit B, at 4 stating: "If the invoice is not paid in full within 30 days the Members Association will take further action as provided for in the Declarations."

<sup>45</sup> December 9, 2021, Hearing Transcript at 172, lines 24.

<sup>46</sup> *Id.* at 181 lines 1-6.

<sup>47</sup> December 8, 2021, Hearing Transcript at 19, lines 7-16.

company, to assist with disseminating invoices and collecting payments. Once Concord develops a list of delinquent members, they send the list to Members Services and anyone who has not paid has their account locked so they cannot use their time or reservations at the club or any other destination club until the balance is paid. Ms. Leighton-Herrmann further stated the lock and key system for the condominium owners is similar to a hotel reservation; members reserve their stay and check-in at the security desk where they are handed an electronic key which will unlock their units.<sup>48</sup> When Ritz-Carlton implements this punitive measure against a delinquent member, the front desk clerks are notified and withhold keys.

¶41 Additionally, Mr. Cutrona, Sr. testified that the Program Manager for the St. Thomas Club is The Cobalt Travel Company, L.L.C (“Cobalt”), a Marriott subsidiary.<sup>49</sup> Cobalt enforces lock-out procedures against delinquent members for both annual and special assessments. Notably, the October 22, 2021 letter from Great Bay to NA members came only three weeks after the Ritz-Carlton sent their annual letter to each NA member which contains language that the lock-out procedures apply to “*all amounts due and owing for common charges.*”<sup>50</sup> Irrespective of Great Bay’s argument that they have no intent on using lock-out as a punitive measure, there was no conclusive testimony or any documentary evidence presented to establish Great Bay has no authority to demand or request Ritz-Carlton to institute a lock-out. Moreover, there was nothing to preclude Great Bay from implementing policies and contracting directly with Cobalt, as they did with Concord, to enforce the lock-out mechanism. The timing of these two letters and the

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<sup>48</sup> December 8, 2021, Hearing Transcript at 21 lines 16-25 and 22 lines 1-20.

<sup>49</sup> December 13, 2021, Hearing Transcript at 100 lines 19-25 and 101 lines 1-3.

<sup>50</sup> Defendant’s Exhibit C, October 1, 2021 Letter from Ritz-Carlton to all Great Bay members, at 2.

explicit threat of lock-out in the Ritz-Carlton's letter is a contributory factor for a reasonable person to conclude that the threat of a lock-out resulted in apparent showing of irreparable harm to NA.

¶42 The harm, or the appearance of it, is not mitigated by virtue of the existence of alternative measures. Neither is it mitigated or absolved because Great Bay has not decided on that specific course of action. Mr. Doyle testified that the Great Bay Board met prior to the issuance of the letter<sup>51</sup> and the Board discussed four options they could take against delinquent members: (1.) lock-outs, (2.) placing a lien on the unit, (3.) renting out the member's unit, or (4.) seeking monetary judgments against the delinquent members. The Court has no assurances in Great Bay's position in the absence of minutes or written affirmation to support the Board's intent of not instituting a lock-out measure for failure to pay the invoices timely. Great Bay's reliance that NA members will not be harmed because Great Bay did not explicitly state they would lock-out delinquent members fails to recognize the "intangible benefits associated with property ownership, such as the increased sense of pride, well-being, and security attendant to the right to choose when and how to use, maintain and cherish one's property...." *Hansen v. Government of the Virgin Islands*, 53 V.I. 58, 91 (V.I. Terr. Ct. 1999). "A timeshare plan is a form of property ownership that allows owners of interests in the plan to share rights to use the timeshare plan property, where typically each owner is allotted their own period of time for use." *Great Bay Condominium Owners Association, Inc. v. Government of Virgin Islands*, 2018 WL 4690372 \*1 (D.V.I. 2018).

¶43 Further, the Third Circuit has held that "where 'interests involving real property are at stake, preliminary injunctive relief can be particularly appropriate because of the unique nature of the property interest.'" *Minard Run Oil Co. v. U.S. Forest Service*, 670 F.3d 236, 256 (3d. Cir.

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<sup>51</sup> December 9, 2021, Hearing Transcript at 172, lines 24.

2011) (quoting *RoDa Drilling Co. v. Siegal*, 552 F.3d 1203, 1210 (10th Cir. 2009). While it is established that timeshare owners have real property interests, NA is “still required to demonstrate that irreparable harm will result from a temporary cessation of its alleged property right.” *North Jersey Vineyard Church v. Township of South Hackensack*, 2016 WL 1365997 \*3 (D. N.J. 2016). The threat of irreparable harm must be “a presently existing one and not a remote or speculative possibility.” *Id.* Here, NA has adequately shown that the threat of lock-out is an imminent threat and that it is highly probable Great Bay would exercise this punitive measure.

¶44 This proposition is supported by Mr. Doyle’s testimony. The only evidence provided was Mr. Doyle’s recollection, particularly representing one vote as a Board member, of the decision to not impose lock-outs, or the other measures. But even if there was written evidence to show they will not exercise the lock-out option, there is still nothing to preclude Great Bay from subsequently changing their decision so as to enforce a non-monetary punitive measure to ensure NA members pay the assessments. The insistence, without documentary support, that the Board would likely only seek money judgments against the members is not convincing.

¶45 Even if this lock-out was imaginary or NA’s unfounded speculation, Great Bay confirmed NA’s suspicions when they issued the December 3, 2021 letter instituting a lock-out measure. The letter reads, in pertinent part:

*“Effective November 12, 2021 if a member did not pay their dues they were considered delinquent and were locked out of using their time and privileges at the club until they became current.”*

This letter magnifies NA’s concerns about being locked out of their units is not some speculative misreading of the Declaration regarding the action that Great Bay may take, but is an action Great Bay has taken and will likely take again.

¶46 Further, this letter came three weeks after the Court issued the TRO and ordered Great Bay to rescind the invoices sent to NA. Yet, this letter signals to the Court that lock-outs are standard and used by Great Bay against delinquent members. In fact, this Court believes, the intervention of the TRO, which was issued before Great Bay's November 22, 2021 deadline to pay the assessments, is the only measure that prevented Great Bay from implementing the lock-out. This future threat of lock-out was sufficient to constitute irreparable harm.

¶47 In addition to being deprived of his property, Mr. Cutrona, Sr. testified to other consequences of being locked out of his unit.<sup>52</sup> He testified that members are provided with the information of their allotted reservations sixteen months in advance in order to provide members enough notice to arrange airfare, rent out their units, arrange schedules, and book other aspects of their trips.<sup>53</sup> Locking members out of their units will severely harm NA members, including having to make alternative, more costly arrangements regarding airfare and lodging, or even cancelling the trip altogether. Mr. Cutrona, Sr. stated that regarding his 2022 reservations he has offered one of his weeks to the winner of a charity auction.<sup>54</sup> He described the embarrassment he would face if he were locked out of his unit and then must rescind his offer.<sup>55</sup>

¶48 Even more concerning is Great Bay's option under the Sixth Amendment to the Supplementary Declaration, which allows Great Bay to rent out the residences of NA members who are more than sixty (60) days delinquent in paying their assessments.<sup>56</sup> Even if the member becomes current and in good standing, the member will have no right to use their allocated

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<sup>52</sup> December 8, 2021, Hearing Transcript at 105 lines 9-25, 106 lines 9-25, and 107 lines 1-2.

<sup>53</sup> *Id.*

<sup>54</sup> Affidavit of Salvatore M. Cutrona, Sr.'s at ¶13.

<sup>55</sup> *See id.*

<sup>56</sup> Sixth Amendment to the Supplementary Declaration at 2, ¶1(a).



residence interest of that time.<sup>57</sup> Without injunctive relief, all NA members who have not paid the CU-1 assessments, despite paying the annual assessments of their respective unit, would be delinquent and in jeopardy of having their units being rented. The Court finds that locking members out of their residence is punitive enough; however, to exercise the option to rent out the members' units and to deny their use after becoming current, even if the unit is not rented, is clearly irreparable harm. Despite Great Bay's insistence that the only penalty would be money judgments, without injunctive relief there is nothing to prevent Great Bay from electing these punitive measures. "The alternatives presented by [Great Bay] do not negate the existence of irreparable harm to [NA]." *See SBRMCOA, LLC v. Beachside Associates, LLC* 2015 WL 5168350 \*5 (V.I. Super. Ct. 2015). "Such a harm is irreparable because it is impossible to restore past deprivation of property use." *Id.* Thus, the threat and ability of irreparable harm is enough to enjoin Plaintiff's actions. *See SBRMCOA, LLC v. Beachside Associates, LLC* 2015 WL 5168350 \*4 (V.I. Super. Ct. 2015). Considering these additional harms, coupled with the deprivation of property, the Court finds this factor weighs heavily in favor of NA.

**C. Great Bay will not be harmed if injunction is granted.**

¶49 As to the third factor, the balancing of harms between the parties, the court looks at whether the nonmoving party will suffer irreparable harm if this injunction is issued, and if so to what extent.<sup>58</sup> The court also considers whether the injunction would destroy the status quo, as one of the goals of a preliminary injunction is to maintain the status quo.<sup>59</sup> Here, the underlying litigation has been pending for four years and Great Bay has not collected on these assessments for five

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<sup>57</sup> *Id.* at ¶1(c).

<sup>58</sup> *SBRMCOA, LLC*, 62 V.I. at 188.

<sup>59</sup> *Id.*

years. Great Bay argues that they will be harmed by the issuance of an injunction because they cannot use those funds for the betterment of the association. Despite a lack of testimony, Great Bay argues there are currently exorbitant maintenance costs associated with operating CU-1. Mr. Doyle testified that Great Bay is responsible for the maintenance and upkeep of the entire Ritz-Carlton premises, including CU-1, and Great Bay needs these funds to maintain CU-1.<sup>60</sup>

¶50 Ms. Chung testified that on several occasions Great Bay has held dinners with private chefs and other events in the Grand Palazzo Club during this five-year period and has excluded NA from any use of the lounge.<sup>61</sup> Mr. Cutrona, Sr. also stated NA requested to hold their annual Board meeting in the lounge which was denied.<sup>62</sup> In fact, since September 20, 2021, Great Bay has outright rejected any use of common space within the condominium, including the Grand Palazzo Club, member's reception area, and member's lounge.<sup>63</sup> Great Bay did not refute this testimony.

¶51 For the last five years, Great Bay has had exclusive control and use of CU-1. Great Bay argues NA members abandoned their use of CU-1, and under § 920 of the Condominium Act remain liable for common charges because the duty to pay assessments cannot be abandoned. However, NA members did not abandon their use of CU-1, but rather have been denied access to the property by Great Bay for failure to pay the assessments. Yet, despite Great Bay's exclusive use of CU-1, they expect NA's members alone to be responsible for approximately two hundred thousand dollars (\$200,000) of assessments annually for a unit they cannot access without permission from Great Bay and a unit they have been precluded from using.

<sup>60</sup> December 9, 2021, Hearing Transcript at 64 line 25, 65 lines 1-9, and 66 lines 17-20.

<sup>61</sup> December 13, 2021, Hearing Transcript at 75 lines 4-13, 22-25.

<sup>62</sup> December 13, 2021, Hearing Transcript at 76 lines 1-3.

<sup>63</sup> December 8, 2021, Hearing Transcript at 119, lines 1-24.

¶52 Further, Great Bay argues they would be harmed if an injunction was issued because of the costs Great Bay incurred to invoice the NA members themselves. Ms. Leighton-Herrmann testified that Great Bay approached the management company to get their assistance with the issuing of the CU-1 assessment invoices, but the Ritz-Carlton declined.<sup>64</sup> Ms. Chung testified that because the Ritz-Carlton was not going to issue the assessments, Great Bay was “forced” to bill the NA members themselves, requiring Great Bay to separately contract with Concord to invoice the NA members.<sup>65</sup> Great Bay argues that by having to re-issue these assessments they will be harmed.

¶53 However, Great Bay was able to promptly notify NA members the invoices were rescinded by reason of the TRO with a mass email distribution to such members, at no added cost to Great Bay, thus it can be concluded that Great Bay can re-issue the invoices at minimal-to-no cost. The same invoices could simply be reissued by email, and the same members Great Bay sought to collect from in its October 2021 invoices would be readily billed again, with whatever additional interest or late fees accrued. Additionally, if Great Bay were to prevail in the underlying litigation, they can collect the assessments for the past five years with interest and include the time between the issuing of the injunction and the resolution and will be made whole at the conclusion. Therefore, considering the *de minimis* cost associated with reissuing the invoices, which Great Bay can recover with interest and that Great Bay has had the exclusive use of CU-1 for the last five years, the Court finds there are no significant monetary or other harms associated with Great Bay not reissuing the invoices.

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<sup>64</sup> December 8, 2021, Hearing Transcript at 51, lines 10-18.

<sup>65</sup> December 13, 2021, Hearing Transcript at 22 lines 9-25 and 23 lines 1-10.

¶54 Similarly, as Great Bay contracted directly with Concord to disseminate the invoices, they may also contract directly with Cobalt to enforce the lock-out procedures. Without the preliminary injunction, there would be nothing to prevent Great Bay from contracting with Cobalt. In weighing the harms to both parties, the Court finds NA would face much greater harm if the situation remained unchanged. By granting the injunction in favor of NA, the status quo would remain; NA members will still have full access to their property, and should Great Bay ultimately prevail, Great Bay would be able to collect the monies due for these assessments with interest.

**D. The public has a significant interest in the facilities at the Ritz-Carlton.**

¶55 With respect to the public interest, consideration should be given to Great Bay's necessity to use these funds for the betterment of the Ritz-Carlton complex as a whole. However, the public also has a significant interest in Associations complying with the Virgin Islands Condominium Act, their respective Declarations and all Amendments, and their own governing and organizational documents. As previously stated, the statutory construction of § 909 is interpreted as the common area charges for CU-1 are the responsibility of the owner, which has yet to be determined.

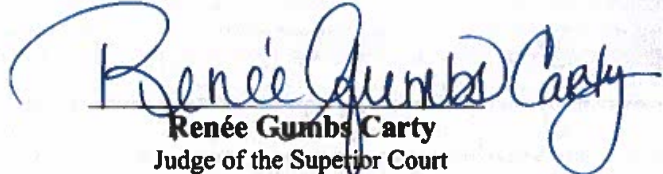
¶56 Furthermore, the public has an interest in ensuring that rights of condominium association members are not undermined. For the last five years, Great Bay has had control of CU-1, to the outright exclusion of NA, despite Great Bay's contention that NA is responsible for the maintenance fees forever. The Court has to take into consideration the apparent inequity in the mandate of an association to pay assessments in perpetuity for a property it may neither own nor has access to.

**Great Bay Condominium Owners Association, Inc.  
v. The Neighborhood Association, Inc.  
Case No. ST-18-CV-768  
Memorandum Opinion**


**2022 VI Super 41U**

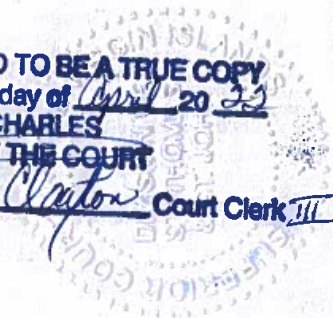

Accordingly, the Court finds that all four factors weigh in favor of granting injunctive relief to the Defendant. An appropriate Order follows.

Dated: April 11, 2022

  
**Renée Gumbs Carty**  
Judge of the Superior Court  
of the Virgin Islands

**ATTEST:  
Tamara Charles  
Clerk of the Court**

By:   
for Latoya Camacho  
Court Clerk Supervisor 4/11/2022

  
**CERTIFIED TO BE A TRUE COPY**  
This 13<sup>th</sup> day of April 20 22  
**TAMARA CHARLES**  
**CLERK OF THE COURT**  
By  **Mula Clayton** Court Clerk III

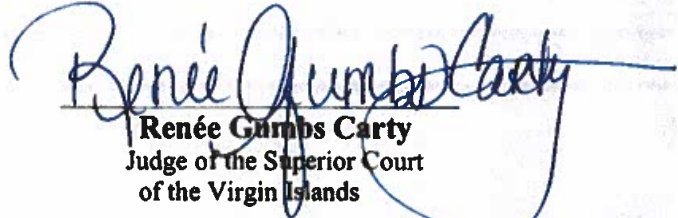


Great Bay Condominium Owners Association, Inc.  
v. The Neighborhood Association, Inc.  
Case No. ST-18-CV-768  
Memorandum Opinion Order  
Page Two


Cite as 2022 VI Super 41U

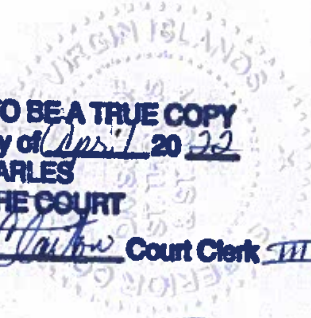

**ORDERED** that copies of this Order shall be distributed to W. Mark Wilczynski, Esquire,  
David Wentzel, Esquire, and Maria Tankenson Hodge, Esquire.

Dated: April 11, 2022

  
**Renée Gumbs Carty**  
Judge of the Superior Court  
of the Virgin Islands

**ATTEST:**  
Tamara Charles  
Clerk of the Court

By:   
Latoya Camacho  
Court Clerk Supervisor 4/11/2022

  
**CERTIFIED TO BE A TRUE COPY**  
This 13<sup>th</sup> day of April, 2022  
**TAMARA CHARLES**  
**CLERK OF THE COURT**  
By  **Paula Clayton** Court Clerk **III**

**FILED**

April 11, 2022 04:06 PM  
ST-2018-CV-00768  
TAMARA CHARLES  
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS**  
District of St. Thomas/St. John

**GREAT BAY CONDOMINIUM OWNERS  
ASSOCIATION, INC.,**  
Plaintiff

Case Number: **ST-2018-CV-00768**  
Action: **Declaratory Judgment**

v.

**THE NEIGHBORHOOD ASSOCIATION,  
INC.,**  
Defendant.

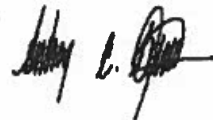
**NOTICE of ENTRY  
of  
MEMORANDUM OPINION**

To: <u>W. Mark Wilczynski, Esquire</u>	<u>Maria T. Hodge, Esquire</u>
<u>David F. Wentzel, Esquire</u>	<u>Clerk of the Court, Tamara Charles</u>
<u>Superior Judges &amp; Magistrates</u>	<u>General Counsel</u>
_____	_____
_____	_____
_____	_____
_____	_____

Please take notice that on **April 11, 2022**  
a(n) \_\_\_\_\_ **MEMORANDUM OPINIION**  
dated **April 11, 2022** was entered  
by the Clerk in the above-titled matter.

Dated: April 11, 2022

By: Tamara Charles  
Clerk of the Court



Audrey C. Brin  
Court Clerk II



IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

_____ )	
GREAT BAY CONDOMINIUM OWNERS )	
ASSOCIATION, INC. )	CIVIL NO. ST-19-CV-650
)	
PLAINTIFF, )	ACTION FOR BREACH AND
V. )	DEBT
)	
THE NEIGHBORHOOD ASSOCIATION, INC. )	
)	JURY TRIAL DEMANDED
DEFENDANT. )	
_____ )	

**GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.'S RESPONSES TO  
NEIGHBORHOOD ASSOCIATION, INC.'S FIRST REQUEST FOR ADMISSIONS**

Plaintiff GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC., ('GBCOA'), hereby responds to *Defendant's First Request for Admissions*. GBCOA's responses are timely as follows:

**ANSWERING OR OBJECTING TO A RULE 36 REQUEST TO ADMIT**

The procedure for propounding requests for admissions under *V.I.R.Civ.P.* 36 allows a party to request another party to admit or deny the truth of a factual statement. The rule "has been carried forward without material change" from *FED.R.CIV.P.* 36. *Id.*, Advisory Committee Note. It also allows for the answering party to object to such a request. *Id.*, Sections (a)(3) and (a)(5). It is a proper ground for objection that the matter demanded be admitted is beyond the scope of discovery permitted by Rule 26(b)(1). *Id.*, Section (a)(1)(A). *See also Nat'l Semiconductor Corp. v. Ramron Int'l Corp.*, 265 F. Supp. 2d 71, 73 (D.C. Cir. 2003). Rule 26(b)(1), in turn, restricts discovery to that which is relevant and non-privileged. A proper response to a Rule 36 request to admit may assert an objection where the request

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seeks information not relevant to the cause of action.

Requests for admission are limited in purpose and function: “[r]equests to [a]dmit are not a discovery device... They are designed to narrow the issues for trial.” *Nat’l Semiconductor* at 74 (internal citation omitted). They are “nothing more than... a request that a certain fact be stipulated.” *Id.* See also *Lakehead Pipe Line Co. v. American Home Assur. Co.*, 177 F.R.D. 454, 458 (D.C.Minn. Dec. 5, 1977)(“Requests for Admission are not a discovery device.”), as quoted in *Victor-Perez v. Diamondrock Frenchman’s Owner, Inc.*, 2018 V.I. LEXIS 39, \*18 (V.I. Super. Ct. Apr. 5, 2018).

Requests to admit conclusions of law, rather than of facts, are improper and may be refused. See *Fidelity Trust Co. v. Stickney*, 129 F.2d 506, 1942 U.S. App. LEXIS 3408 (7<sup>th</sup> Cir. 1942). Similarly, requests for admissions which call for interpretation of documents, requests for opinions, conjectures, conclusions of law, or suspicions are objectionable. *Pittsburgh Hotels Assoc. v. Urban Redevelopment Authority*, 29 F.R.D. 512, 1962 U.S. Dist. LEXIS 6054 (D. Pa. 1962). Requests are not to be employed as a means to establish matters obviously in dispute or to answer questions of law. *Lakehead Pipe Line Co.*, 177 F.R.D. at 458, as quoted in *Victor-Perez*, *infra* (Rule 36 “allows parties to agree to opinions of fact or mixed fact and law – the undisputed or peripheral issues”). Where requests for admission are not designed to identify and eliminate matters on which the parties agree, but to seek information as to fundamental disagreement at the heart of the lawsuit, a court may excuse a party from responding to the requests. See, e.g., *Republic of Turk. V. Christie’s, Inc.*, 326 F.R.D. 394, 399 (S.D.N.Y. 2018). “One party cannot demand the

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other party admit the truth of a legal conclusion.” *Williamson v. Corr. Med. Servs.*, 2009 U.S. Dist. LEXIS 41438, at \*8 (D. Del. May 14, 2009).

Requests for admission must be simple and concise. *Zens Invs., LLC v. Unbreakable Co.*, 2008 U.S. Dist. LEXIS 78684, \*4 (E.D. Pa. 2008) (citation omitted). It should be able to be denied or admitted with an absolute minimum of explanation or qualification. *4A Moore's Federal Practice*, 2<sup>nd</sup> Ed. 36.05[a] at 36-50. “Rule 36 should not be used unless the statement of fact sought to be admitted is phrased so that it can be admitted or denied without explanation.” *United Coal Companies v. Powell Const. Co.*, 839 F.2d 958, 968 (3d Cir. 1988). Courts have applied to “simple and concise” requirement by breaking down a request and analyzing the structure to see the number of facts that are actually asked to be admitted. *See generally, Zens, infra; see also Langer v. Monarch Life Ins. Co.*, 966 F.2d 786, 805 (3d Cir. 1992) (as cited in *Zens*).

The one word answer “Denied” is a sufficient response to requests and the only option remaining to the propounding party is to “launch a Rule 37(c)(2) motion, if an when the matters ... denied are, indeed, proved true at trial. Only then can the Court award ... expenses and attorney’s fees expended in proving the matter.” *Victor-Perez, infra*, at \*24.

### **Preliminary Statement of Objection**

These responses and objections are made solely for the purpose of this action. Each response is subject to any and all objections as to competence, relevance, materiality, propriety, and admissibility as well as any and all objections and grounds that would require the exclusion of any statement contained therein were made by a

witness present and testifying in court, all of which objections and grounds are hereby reserved and may be imposed at the time of arbitration and/or trial.

The following responses are based upon information presently available to the Plaintiff and except for the explicit facts admitted herein, no incidental or implied admissions are intended hereby. The fact that Plaintiff responds or objects to any request should not be taken as an admission that the Plaintiff accepts or admits the existence of such facts set forth or assumed by such request, or that the response constitutes admissible evidence. That the Plaintiff responds to part or all of any such request is not intended, nor should be construed as a waiver by Plaintiff of all or any part of any objection to such request.

The Plaintiff objects to these requests on the basis that they are overly broad, unduly vague, and ambiguous. Further, they are burdensome and oppressive in that the identification of these materials is not available without undue effort and expense. The party responding to discovery is not required to prepare the case for the propounding party. Finally, objection is also made to these requests on the grounds that the information sought is not proportional to the needs of the case, in light of the factors set out in *V.I.R.Civ.P.* 26(b)(1). Plaintiff also objects on the grounds that the discovery requests are untimely and in violation and the discovery deadlines established by the Court in its Scheduling Order of March 4, 2020.

To the extent that any or all of the requests call for information which constitutes information or materials prepared in anticipation of litigation or for trial, or information or materials covered by the work-product doctrine, or which constitutes information which

is privileged by virtue of the attorney-client privilege, or the work-product doctrine, the Plaintiff also objects.

**RESPONSES TO FIRST REQUESTS FOR ADMISSIONS**

1. Admit that Paragraph 5 of the Fourth Amendment to the Declaration of Condominium of the Great Bay Condominium Owners Association, dated November 2015 and recorded with the Recorder of Deeds for St. Thomas & St. John as Document No. 2005012779, provides, in part:

The Declarant or an Owner of a Commercial Unit may also convey a Commercial Unit, or any subdivision thereof in the case of Declarant, to the Association for no or nominal consideration without the consent of any other Owner or the Association, and the Association shall be obligated to accept such conveyance. A Commercial Unit will only be transferred to the Association free of service contracts or other obligations other than as provided in the Declaration, By-laws and Rules and Regulations, all as amended from time to time.

**RESPONSE TO REQUEST 1: Denied.**

2. Admit that the phrase "to the Association" contained in the provision of Paragraph 5 of the Fourth Amendment to the Declaration of Condominium of the Great Bay Condominium Owners Association relating to the Owner's right to convey a Commercial Unit "to the Association," is intended to refer to the Great Bay Condominium Owners Association, Inc.

**RESPONSE TO REQUEST 2: Denied.**

3. Admit that the intent of Paragraph 5 of the Fourth Amendment to the Declaration of Condominium is to allow an owner of a Commercial Unit to convey the Commercial

Unit to GBCOA for no consideration, and without the need for the consent of GBCOA or any other Owner, so long as the Commercial Unit is transferred free of service contracts or other obligations other than as provided in the Declaration, By-laws and Rules and Regulations, all as amended from time to time.

**RESPONSE TO REQUEST 3: Denied.**

4. Admit that the intent of Paragraph 5 of the Fourth Amendment to the Declaration of Condominium is to obligate GBCOA to accept a transfer of a Commercial Unit, so long as the Commercial Unit is transferred free of service contracts or other obligations other than as provided in the Declaration, By-laws and Rules and Regulations, all as amended from time to time.

**RESPONSE TO REQUEST 4: Denied.**

5. Admit that above-quoted language of Paragraph 5 the Fourth Amendment to the Declaration of Condominium was never amended in any material respect prior to the delivery by NA to GBCOA of the Condominium Deed to Commercial Unit CU-1 dated September 20, 2017.

**RESPONSE TO REQUEST 5: Denied.**

6. Admit that Commercial Unit CU-1 was transferred by NA to GBCOA free of service contracts or other obligations other than as provided in the Declaration, By-laws and Rules and Regulations, all as amended from time to time.

**RESPONSE TO REQUEST 6: Denied.**

7. Admit that the members of GBCOA currently have equal rights of access and use of Commercial Unit CU-1 as the members of NA.

**RESPONSE TO REQUEST NO. 7: Denied.**

8. Admit that the parties (NA and GBCOA), in entering into the Ratification Agreement dated May 29, 2014, had no actual intent to restore Commercial Unit CU-1 to its condition before the work referenced in the Ratification Agreement was undertaken.

**RESPONSE TO REQUEST 8: Denied.**

9. Admit that restoring Commercial Unit CU-1 to its condition before the work referenced in the Ratification Agreement dated May 29, 2014 was undertaken would entail restoring Commercial Unit CU-1 to a condition violative of the applicable International Building Code, as well as health and safety standards.

**RESPONSE TO REQUEST 9: Denied.**

10. Admit that NA has no actual intention of restoring Commercial Unit CU-1 to its condition before the work referenced in the Ratification Agreement dated May 29, 2014 was undertaken, and intends to incur no actual expenses for any such restoration.

**RESPONSE TO REQUEST 10: Denied.**

11. Admit that the actual purpose of the parties in agreeing to the provision of the Ratification Agreement dated May 29, 2014, relating to the restoration of Commercial Unit CU-1 to its condition before the work referenced in the Ratification Agreement dated May 29, 2014 was undertaken, was to create a disincentive for the acquisition by any person or entity of more than 33% of the voting interests in NA, or the acquisition of majority control of the NA Board of Directors by persons or entities other than those independently owning their Residence Interests.

**RESPONSE TO REQUEST 11: Denied.**

12. Admit that GBCOA itself agreed to and facilitated the acquisition by a third party of more than 33% of the voting interests in NA by transferring 121 Residence Interests in Two Bedroom Suites (all such Residence Interests being part of the NA regime) to First American Trust, FSB, as Trustee of MVC Trust, resulting in the beneficial ownership by MVC Trust of more than 40% of NA Residence Interests.

**RESPONSE TO REQUEST 12: Denied.**

13. Admit that if GBCOA is deemed by the Court to be the owner of Commercial Unit CU-1, all improvements thereto previously funded by NA, through the application of settlement proceeds of the Code Violation Litigation and other funds supplied by NA, become the sole property of GBCOA.

**RESPONSE TO REQUEST 13: Denied.**



14. Admit that if GBCOA is deemed by the Court to be the owner of Commercial Unit CU-1, the cost of the ownership, maintenance, repair and management of Commercial Unit CU-1 should, in the opinion of GBCOA, be treated as an ordinary common expense of all GBCOA members.

**RESPONSE TO REQUEST 14: Denied.**

15. Admit that if GBCOA is deemed by the Court to be the owner of Commercial Unit CU-1, it would be improper, in GBCOA's opinion, to impose any greater percentage of the cost of the ownership, maintenance, repair and management of Commercial Unit CU-1 upon NA members than the percentages of responsibility for all common expenses set forth in GBCOA's Declaration provisions relating to the "Determination of Percentage Ownership Allocation and Assessment in Common Expenses" (as modified by the Supplementary Declaration and any applicable amendments).

**RESPONSE TO REQUEST 15: Denied.**

16. Admit that NA actually spent more than \$2.2 million on the combined cost of remediation and improvements of Unit CU-1, and legal fees and expenses in civilly prosecuting the Code Violation Litigation.

**RESPONSE TO REQUEST 16: Denied.**

17. Admit that NA's actual expenditures on remediation and improvements of Commercial Unit CU-1, combined with NA's actual expenditures for legal fees and expenses incurred in the civil prosecution of the Code Violation Litigation, exceed the

total proceeds of the settlements of the Code Violation Litigation, including those certain settlement proceeds currently held in escrow in the Trust Account of Hodge & Hodge.

**RESPONSE TO REQUEST 17: Denied.**

18. Admit that GBCOA incurred no unreimbursed cost or expense in connection with the renovation and remediation of Commercial Unit CU-1.

**RESPONSE TO REQUEST 18: Denied.**

19. Admit that NA reimbursed GBCOA for all legal fees and litigation expenses that GBCOA incurred in connection with the civil prosecution of the Code Violation litigation.

**RESPONSE TO REQUEST 19: Denied.**

20. Admit that GBCOA, if deemed by the Court to be the owner of Commercial Unit CU- 1, received the benefit of all of the aforesaid expenditures by NA.

**RESPONSE TO REQUEST 20: Denied.**

Respectfully submitted,

DATED: January 8, 2021

*/s W. Mark Wilczynski*  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on this the 8<sup>th</sup> day of January, 2021, I caused a true and exact copy of the foregoing **GREAT BAY CONDOMINIUM OWNERS ASSOCIATION, INC.'S RESPONSES TO NEIGHBORHOOD ASSOCIATION, INC.'S FIRST REQUEST FOR ADMISSIONS** to be filed with the Court's electronic filing system and served via electronic mail, upon:

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***Counsel for Defendant***

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*/s W. Mark Wilczynski*