

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re:)
) Case No. 20-02092-hb
)
Foxwood Hills Property Owners)
Association, Inc.,) CHAPTER 11
)
)
Debtor.)
_____)

**APPLICATION FOR AN ORDER AUTHORIZING THE DEBTOR TO RETAIN
AMERICAN LEGAL CLAIM SERVICES, LLC AS CLAIMS AND NOTICING AGENT
FOR THE DEBTOR IN ACCORDANCE WITH 28 U.S.C. § 156(c), PURSUANT TO SC
LBR 2081-1, *NUNC PRO TUNC* TO THE PETITION DATE**

Foxwood Hills Property Owners Association, Inc. (the “**POA**”), the debtor and debtor-in-possession, hereby applies (the “**Application**”) for authorization to retain and employ American Legal Claim Services, LLC (“**ALCS**”) as the claims and noticing agent in this case in accordance with 28 U.S.C. § 156(c), pursuant to SC LBR 2081-1, *nunc pro tunc* to the commencement of this case. In support of the Application, the POA respectfully represents as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter under 28 U.S.C. §§ 1334 and 157(b) and Local Civ. Rule 83.IX.01 (D.S.C.). This matter is a core proceeding under 28 U.S.C. § 157(b), and venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

2. On May 8, 2020 (the “**Petition Date**”), the POA filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code (11 U.S.C. § 101, *et seq.*, the “**Bankruptcy Code**”). The POA is in possession and control of its property and is managing its business as a Chapter 11 debtor-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

3. As its name indicates, the POA is the property owners association responsible for the maintenance, operation and management of roadways, certain real estate and amenities for the Foxwood Hills community, a development located on Lake Hartwell in Oconee County, South Carolina, comprised of approximately 4,100 lots currently owned by approximately 2,350 lot owners. The real property owned by the POA includes a clubhouse, a pool, tennis courts, a parking area, other improvements, substantial common areas and certain vacant lots.

4. This Chapter 11 case is filed for the purposes of addressing issues relating to restrictions in certain deeds and recorded real property filings, most of which have not been followed or enforced for decades; inequitable treatment that would result if the restrictions were now enforced; financial fall-out resulting from the issues over the restrictions, which jeopardizes the POA's ability to properly operate and fulfill its responsibilities in the future; and other organizational needs of the POA, such as the need for updated by-laws. The POA believes that Chapter 11 provides the best and most efficient forum for it to address these matters comprehensively, at one time.

5. This Application is made pursuant to SC LBR 2081-1, in accordance with 28 U.S.C. §§ 156(c), for an order authorizing the POA to retain and employ ALCS to act as the claims and noticing agent in this case. As the claims and noticing agent, ALCS will assume responsibility for the service and distribution of notices and the maintenance, processing and docketing of proofs of claim filed in this Chapter 11 case. The POA is informed and believes that ALCS' rates are competitive and reasonable in relation to the rates and charges of other companies that serve as claims and noticing agents in other cases, and in relation to the quality of ALCS' services and its expertise. The terms of retention are set forth in the Services Agreement annexed hereto as **Exhibit A** (the "**Services Agreement**"); provided, however, that in the event of any inconsistency between

the terms in the Services Agreement and the Order entered upon this Application (a copy of the proposed Order is attached), the terms and provisions set forth in the Order shall govern.

5. As shown in its filed schedules, the number of creditors, potential claimants and parties in interest in this case exceeds five hundred (500) persons and entities. The actual number is approximately 2,350. Pursuant to SC LBR 2081-1, unless otherwise ordered by the Court, in Chapter 11 cases in this district with 500 or more creditors or parties in interest, the debtor is to employ a claims and noticing agent in accordance with 28 U.S.C. § 156(c). The POA seeks authorization to employ ALCS in compliance with SC LBR 2081-1.

6. ALCS has acted as the claims and noticing agent in numerous cases of comparable size throughout the country, including a case now pending in this Court, *In re Sand Castle South Timeshare Owners Association, Inc.*, Case No. 19-02764-jw.

7. By the POA's employment of ALCS as the claims and noticing agent in this Chapter 11 case, the service and distribution of notices and the processing of claims will be expedited, and the Clerk of this Court (the "**Clerk**") will be relieved of the administrative burden of processing service upon the large number of creditors and parties in interest, and of processing the potentially large number of claims, in this case. In support of this Application, the POA submits the Affidavit of Jeffrey L. Pirrung, the Managing Director of ALCS, which is attached as **Exhibit B** to this Application (the "**ALCS Affidavit**").

8. This Application pertains only to the work to be performed by ALCS as the claims and noticing agent under the Clerk's delegation of duties permitted by 28 U.S.C. § 156(c) and SC LBR 2081-1, and any work to be performed by ALCS outside of this scope is not covered by this Application or by the Order granting authorization for ALCS' employment as the claims and noticing agent. Specifically, ALCS will perform the following tasks in its role as claims and

noticing agent (the “**Claims and Noticing Services**”), as well as all quality control relating to such services:

- (a) Prepare and serve required notices and documents in the Chapter 11 case in accordance with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) in the form and manner directed by the POA and/or the Court, including (i) notice of the commencement of the Chapter 11 case and the initial meeting of creditors under Bankruptcy Code § 341(a), (ii) notice of any claims bar date, (iii) notices of transfers of claims, (iv) notices of objections to claims and objections to transfers of claims, (v) notices of any hearings on a disclosure statement and confirmation of the POA’s plan of reorganization, including under Bankruptcy Rule 3017(d), (vi) notice of the effective date of any confirmed Chapter 11 plan and (vii) all other notices, orders, pleadings, publications and other documents as the POA or Court may deem necessary or appropriate for an orderly administration of the Chapter 11 case;
- (b) Maintain an official copy of the POA’s schedules of assets and liabilities (collectively, the “**Schedules**”), listing the POA’s known creditors and the amounts owed to them, and the POA’s statement of financial affairs;

- (c) Maintain (i) a list of all potential creditors, equity holders and other parties-in-interest; and (ii) a "core" mailing list consisting of all parties described in Bankruptcy Rule 2002(i), (j) and (k) and those parties that have filed a notice of appearance pursuant to Bankruptcy Rule 9010; update these lists and make the lists available upon request by a party-in-interest or the Clerk;
- (d) Furnish a notice to all potential creditors of the last date for the filing of proofs of claim and a form for the filing of a proof of claim, after such notice and form are approved by this Court, and, if necessary or appropriate for a matter (*e.g.*, the allowance or disallowance of claims), notify such potential creditors of the existence, amount and classification of their respective claims as set forth in the Schedules, which may be effected by inclusion of such information (or the lack thereof, in cases where the Schedules indicate no debt due to the subject party) on a customized proof of claim form provided to potential creditors;
- (e) Maintain a post office box or address for the purpose of receiving claims and returned mail, and process all mail received;
- (f) For *all* notices, motions, orders or other pleadings or documents served, prepare and file or caused to be filed with the Clerk an affidavit or certificate of service within seven (7) business days of service which includes (i) either a copy of the notice served or the docket numbers(s) and title(s) of the pleading(s) served, (ii) a list of persons to whom it was mailed (in alphabetical order) with their addresses, (iii) the manner of service, and (iv) the date served;

- (g) Process all proofs of claim received, including those received by the Clerk's Office, and check said processing for accuracy, and maintain the original proofs of claim in a secure area;
- (h) Maintain the official claims register for the POA (the "**Claims Register**") on behalf of the Clerk; upon the Clerk's request, provide the Clerk with a certified, duplicate unofficial Claims Register; and specify in the Claims Register the following information for each claim docketed: (i) the claim number assigned, (ii) the date received, (iii) the name and address of the claimant and agent, if applicable, who filed the claim, (iv) the amount asserted, (v) the asserted classification(s) of the claim (*e.g.*, secured, unsecured, priority, *etc.*), and (vi) any disposition of the claim;
- (i) Implement necessary security measures to ensure the completeness and integrity of the Claims Register and the safekeeping of the original claims;
- (j) Record all transfers of claims and provide any notices of such transfers as required by Bankruptcy Rule 3001(e);
- (k) Relocate, by messenger or overnight delivery, all of the court-filed proofs of claim to ALCS' offices, not less than weekly;
- (l) Upon completion of the docketing process for all claims received to date in the case, turn over to the Clerk copies of the Claims Register for the Clerk's review (upon the Clerk's request);
- (m) Monitor the Court's docket for all notices of appearance, address changes, and claims-related pleadings and orders filed and make necessary notations on and/or changes to the claims register;

- (n) If the case is converted to Chapter 7, contact the Clerk's Office within three (3) days of the notice to ALCS of entry of the order converting the case;
- (o) Thirty (30) days prior to the closing of the case, to the extent practicable, request that the POA submit to the Court a proposed Order dismissing the ALCS and terminating its services as the claims and noticing agent upon completion of its duties and responsibilities and upon the closing of the case;
- (p) Within seven (7) days of notice to ALCS of entry of an order closing the Chapter 11 case, provide to the Court the final version of the Claims Register as of the date immediately before the close of the Chapter 11 case; and
- (q) At the close of this case, box and transport all original documents, in proper format, as provided by the Clerk's Office, to (i) the Federal Archives Record Administration, or (ii) any other location requested by the Clerk's Office.

9. The Claims Registers shall be opened to the public for examination without charge during regular business hours and on a website maintained by ALCS.

10. ALCS shall not employ any past or present employee of the POA for work that involves the POA's bankruptcy case.

11. The POA respectfully requests that the undisputed fees and expenses incurred by ALCS in the performance of the above services be treated as administrative expenses of the POA's Chapter 11 estate pursuant to 28 U.S.C. § 156(c) and 11 U.S.C. § 503(b)(1)(A), and be paid in the ordinary course of business without further application to or order of the Court. ALCS agrees to maintain records of all of its services showing dates, categories of service, fees charged and

expenses incurred. If any dispute arises relating to the Services Agreement or monthly invoices, the parties to the dispute shall meet and confer in an attempt to resolve the dispute; if resolution is not achieved, the parties may seek resolution of the matter from the Court.

12. The POA is to provide ALCS a retainer in the amount of \$7,500.00. ALCS proposes to hold the retainer under the Services Agreement during the Chapter 11 case as security for the payment of fees and expenses incurred under the Services Agreement.

13. In connection with its retention as claims and noticing agent, ALCS represents in the ALCS Affidavit, among other things, that:

- (a) ALCS will not consider itself employed by the government of the United States of America (the “U.S. Government”) and shall not seek any compensation from the U. S. Government in its capacity as the claims and noticing agent in this Chapter 11 case;
- (b) By accepting employment in this Chapter 11 case, ALCS waives any rights to receive compensation from the U. S. Government in connection with the POA’s Chapter 11 case;
- (c) In its capacity as the claims and noticing agent in this Chapter 11 case, ALCS will be an agent of the United States Bankruptcy Court for the District of South Carolina, and will act on behalf of the United States of America to the extent prescribed by the Bankruptcy Code; and
- (d) ALCS is a “disinterested person” as that term is defined in § 101(14) of the Bankruptcy Code with respect to the matters upon which it is to be employed.

14. To the extent that there is any inconsistency between this Application, the Order

authorizing ALCS' employment and the Services Agreement, the Court's Order shall govern.

15. The POA has provided copies of this Application to the Clerk and to the United States Trustee and submits that no further notice is necessary under the circumstances.

WHEREFORE, the POA prays that the Court enter its Order authorizing the POA to employ ALCS to act as claims and noticing agent as set forth hereinabove and in the proposed Order filed with this Application.

Columbia, South Carolina

May 8, 2020

s/ Julio E. Mendoza, Jr.
Julio E. Mendoza, Jr. (3365)
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
Telephone: 803-540-2026
E-mail: rmendoza@nexsenpruet.com

SERVICES AGREEMENT

This Services Agreement is entered into this 8th day of May, 2020 (the “**Effective Date**”) between American Legal Claim Services, LLC, a Florida limited liability company, 8021 Philips Highway, STE 1, Jacksonville, FL 32256, hereinafter referred to as (“**ALCS**”), and Foxwood Hills Property Owners Association, Inc., a South Carolina corporation, 800 Hickory Trail, Westminster, S.C. 29693, hereinafter referred to as (“**Client**”). ALCS shall mean ALCS, its servants, agents, employees, licensees, subsidiaries, affiliates and subcontractors of ALCS. “**Agreement**” shall mean this agreement in its entirety.

In consideration of the mutual promises contained in this Agreement, Client and ALCS agree as follows:

I. SERVICES

ALCS agrees to provide the services set forth in the “Statement of Work” attached hereto as Exhibit A or any additional services requested by Client. The services to be rendered by ALCS shall commence on the date hereof and continue until either party exercises its rights of suspension or termination as set forth below:

II. ACCESS TO ALCS DATABASE SYSTEM

A. Rights of Ownership

The parties understand that the software programs and other materials (including the name “ALCS”) furnished by ALCS pursuant to the Agreement and/or developed during the course of this Agreement by ALCS are the sole property of ALCS. The term “programs” shall include, without limitation, data processing programs, check printing programs, specifications, applications, routines, sub-routines, procedural manuals and documentation. Client further agrees that any ideas, concepts, know-how or techniques relating to the claims management software or ALCS’s performance of its services developed during the course of this Agreement by ALCS shall not be treated as “work made for hire” and shall be the exclusive property of ALCS.

B. Non-Exclusive License

Pursuant to the terms and conditions of this Agreement, ALCS grants to Client a personal, non-exclusive, non-transferable license to use the Web Client Access version of ALCS's claims management software for access to the claims database. Client's license to use the ALCS software is limited to employees and/or contractors of Client under Client's authorization and control. Client's use of the ALCS software is limited solely to Client's own internal business use with respect to the current data which is the subject of the engagement.

Each authorized user shall access the ALCS software using a logon identifier and password. Client and each Authorized User shall be responsible for maintaining and protecting the user logon identifier and password. Client shall be solely responsible for informing ALCS in writing that a terminated Authorized User's access to the ALCS software is terminated.

III. CONFIDENTIALITY

In order for ALCS to effectively provide services to the Client, it is necessary and desirable for the Client to disclose to ALCS confidential information relating to the Client's past, present or future business. Since it is difficult to separate confidential information from that which is not, ALCS agrees to regard all information gained as a result of services hereunder as confidential; provided, however, if any such information is publicly available, was already in ALCS's possession or known to it, or was rightfully acquired by ALCS from a third party, ALCS shall have no liability for any disclosure of such information.

ALCS further agrees to safeguard the Client's confidential information in a prudent business manner. Except as required in the performance of its duties under the Statement of Work attached hereto as Exhibit A, ALCS agrees to keep confidential and not to disclose to any ALCS employee or employees or any third party, without the express written authorization of Client, the confidential information received from Client. ALCS

agrees not to use the information received from Client for ALCS's own business or commercial purposes.

However, Client hereby agrees that ALCS shall not be liable beyond the limits provided in Section VII herein for damages or losses of any nature whatsoever arising out of the disclosure or use of any material supplied by Client to ALCS in the performance of this Agreement.

IV. PRICES, CHARGES AND PAYMENT

ALCS agrees to charge and Client agrees to pay ALCS for its services at the rates or prices as set forth in the "Fee Schedule" attached hereto as Exhibit B. ALCS will bill Client in quarter-hour increments for charges based on hourly rates.

[Client agrees to provide ALCS with an advance deposit retainer of \$7,500 which ALCS will hold as security for the payment of fees and expenses incurred in rendering the ALCS Services hereunder. In the event the Client doesn't comply with the 30 day payment terms outlined herein, ALCS will apply the deposit retainer to invoices that have been submitted to the Client and are outside of the 30 day payment terms. If the deposit retainer is applied against an invoice then the Client will replenish the retainer so that ALCS holds a deposit sum of \$7,500 while this Agreement remains in force.]

Client agrees to pay ALCS for any reasonably incurred out-of-pocket expenses for long distance charges, postage, supplies, transportation, lodging, meals and related items. ALCS may, at its discretion, pre-bill for anticipated out-of-pocket expenses.

ALCS agrees to submit its invoice to Client on a monthly basis. Client agrees that the amounts invoiced are due and payable thirty (30) days after its receipt of the invoice or at such practicable time after proceeds of sale are made available for payment of Chapter 11 administration. If any payment is not made within such thirty (30) day period, interest will accrue, at the rate of 1.5% per month, on such past-due amount, commencing on the thirty-first (31st) day and continuing until the invoice is paid in full.

ALCS reserves the right to reasonably increase its prices, rates and charges annually on January 2nd following the second anniversary of this Agreement; provided, however, that any such increase is limited to 5%.

In addition to all charges for services and materials hereunder, Client shall pay to ALCS all taxes levied, however designated, that are applicable to the Agreement or are measured directly by payments made under it and are required to be collected by ALCS or paid by ALCS to tax authorities. This provision includes, but is not limited to, sales, use and excise taxes, but does not include personal property taxes or taxes based on net income.

In addition to all other charges for services and materials hereunder, Client shall pay to ALCS any actual charges relating to, arising out of or as a result of any Client error or omission. Such charges shall include, but are not limited to, supplies, re-runs, and any additional administrative, systems development, data processing, clerical, over-time, or other charges billed at the then prevailing ALCS standard rates. ALCS can pre-bill the Client for anticipated costs in circumstances where fees or expenses are expected to be higher than the deposit.

V. WARRANTIES AND LIABILITIES

Accuracy and adequacy of Client's information are the responsibility of Client. ALCS shall have no liability to Client for any act or inaction with respect to Client's written directions or in accordance with the terms of this Agreement, except for ALCS's willful misconduct or gross negligence ("**Willful Misconduct-Gross Negligence Cause**").

ALCS shall have no implied duties or obligations and shall not be charged with knowledge or notice of any fact or circumstance not specifically set forth in this Agreement, a written direction or similar written notice, or order of the court. ALCS may rely upon any instrument, not only as to its due execution, validity and effectiveness, but also as to the truth and accuracy of any information contained therein which ALCS shall

in good faith believe to be genuine, which is in the form of a written direction, similar written notice or order of the court.

ALCS shall not be liable for non-performance or delay of performance hereunder should such non-performance or delay arise out of causes beyond its reasonable control. Such causes may include, but are not limited to, acts of God or a public enemy, fire, electrical failure, strike, lockout, governmental order or regulation or any other cause, whether similar or dissimilar. For purposes of this Section V, "willful misconduct" shall mean an act by ALCS, done, or omitted to be done, not in good faith and without reasonable belief that its action or inaction was in the best interest of the Client.

VI. SUSPENSION OF SERVICE AND TERMINATION

This Agreement shall remain in force until such time as ALCS has fulfilled all of its duties under this Agreement, or upon express written notice from the Client, which notice shall be effective on receipt. Client's obligation to pay all charges which shall accrue up to and including said notification date shall survive any termination hereof. Within thirty (30) days after termination of this Agreement, ALCS shall deliver to Client copies of all requested records and reports (other than ALCS's confidential records and reports) concerning this Agreement.

If Client is in default under any term hereof and such default is not cured within thirty (30) days after ALCS notifies Client in writing of such default, then ALCS may terminate this Agreement. Client's obligation to pay all charges which shall accrue up to and including said termination shall survive any termination hereof.

Upon termination of this Agreement for any reason whatsoever, Client data files in the possession of ALCS shall, at the request of the Client, be returned to Client in the form of a diskette or other acceptable magnetic media; provided, however, that all amounts due and payable by Client pursuant to this Agreement shall be paid prior to such return.

ALCS shall store all returned mail, claims, correspondence and other case documents (collectively "**Case Documents**") until the last day of the month in which the services set forth herein have been completed and billing to the Client is no longer required. Prior to the cessation of services ALCS shall notify Client of the following options:

- (1) ALCS shall continue to store Case Documents at a monthly storage fee as set forth in ALCS's then current storage rates, payable in advance on a monthly basis. In the event Client does not pay ALCS the monthly storage fee for more than 2 consecutive months, ALCS shall have the right to destroy Case Documents without further liability.
- (2) ALCS shall ship all Case Documents to Client, or its designee, at such address as directed by Client. All shipping costs and expenses incurred are to be paid by Client.
- (3) Upon direction by Client, ALCS shall arrange to destroy all Case Documents. All costs and expenses incurred for destruction of documents are to be paid by Client.

VII. INDEMNIFICATION

With respect to performance of ALCS's duties pursuant to this Agreement, written directions or similar written notice, or order of the Court, Client shall, to the fullest extent permitted by law and to the extent provided herein, indemnify and hold harmless ALCS and each of its officers, directors, employees, attorneys, agents and affiliates (collectively referred to in this Agreement as the "**Indemnified Party**" or "**Indemnified Parties**") against any and all claims (whether or not valid), demands, suits, actions, proceedings (including any inquiry or investigation), losses, damages liabilities, costs, and expenses of any kind or nature whatsoever (including, without limitation, reasonable attorneys' fees) incurred by or asserted against any of the Indemnified Parties from and after the date of the Agreement, by any person, whether direct, indirect, or consequential, whether threatened or initiated, as a result of or arising from or in any way relating to the negotiation, preparation, execution, performance or failure of performance of the Agreement or any transactions contemplated herein, whether or not any such Indemnified

Party is a party to any such suit, action, or proceeding, or the target of any such inquiry or investigation; provided, however, that the Indemnified Party shall not have the right to be indemnified hereunder for any liability finally determined by a court of competent jurisdiction, subject to no further appeal, to have resulted solely from the gross negligence or willful misconduct ("**Gross Negligence-Willful Misconduct Clause**") of such Indemnified Party. If any such action or claim shall be brought against any Indemnified Party, such Indemnified Party may, in its sole discretion, retain separate counsel (who may be selected by such Indemnified Party in its sole discretion) in any such action and to participate in the defense thereof. Client shall be liable to pay the reasonable fees and expenses of counsel retained by the Indemnified Party pursuant to the preceding sentence, subject to the foregoing Gross Negligence-Willful Misconduct Clause. All such fees and expense payable by Client pursuant to the foregoing sentence shall be paid from time to time as incurred, both in advance of and after the final disposition of such claim or action. The obligations of Client under this Section VII shall survive any termination of this Agreement and the resignation or removal of ALCS. For purposes of this Section VII, "willful misconduct" shall mean an act by either Party, done, or omitted to be done, not in good faith and without reasonable belief that its action or inaction was in the best interest of the other Party.

VIII. PAYMENT OF ATTORNEY'S FEES

If, at any time during the course of this engagement, or thereafter as a result of this engagement, ALCS engages its own outside counsel for any reason related to this engagement, including, but not limited to 1) being named a witness in any matter related to this engagement; 2) receiving and/or responding to a subpoena of itself, or one of its vendors or related parties, for appearance, documents, deposition, or otherwise; or 3) responding to any official request which is related to this engagement and for which ALCS reasonably believes the assistance of outside counsel to be necessary, ALCS may engage its own counsel after giving notice to the Client of ALCS' intent to hire counsel, and Client shall pay the resulting legal expenses directly to ALCS' legal counsel within the time period required by the invoice from ALCS' counsel.

IX. BANK ACCOUNTS

At the Client's request, ALCS shall be authorized to establish accounts with financial institutions in the name of and as agent for the Client. To the extent certain financial products are provided to the Client pursuant to ALCS's agreement with certain institutions, ALCS may receive compensation from such financial institution for the services ALCS provides pursuant to such agreement.

X. NOTICES

Written notice to a party to this Agreement shall be deemed to have been given on the date of delivery when deposited in U.S. Mail, postage prepaid or sent by overnight courier service and addressed as follows:

If to ALCS:

**ATTN: Jeffrey Pirrung
American Legal Claim Services, LLC
8021 Philips Highway, STE 1
Jacksonville, FL 32256**

If to Client:

**ATTN: Gregory Sheperd, President
Foxwood Hills Property Owners
Association, Inc.
800 Hickory Trail
Westminster, SC 29693**

Copy to:

**Julio E. Mendoza, Jr., Esquire
Nexsen Pruet, LLC
1230 Main Street, Suite 700
Columbia, SC 29201**

XI. GOVERNING LAW; VENUE; ATTORNEYS' FEES.

This Agreement shall be construed in accordance with the laws of the State of Florida without respect to its principles of conflicts of laws. The exclusive venue for any action or proceeding arising under or relating to this Agreement shall be the United States Bankruptcy Court for the District of South Carolina (the "**Bankruptcy Court**")

while the Client's chapter 11 proceeding is ongoing and, upon termination of the chapter 11 proceeding, Duval County, Florida. In the event there is any action or proceeding to enforce the terms of this Agreement, the prevailing party, in addition to any other remedy, shall be entitled to recover reasonable attorney's fees and paralegal fees and all other costs associated with any such action or proceeding, at all trial and appellate levels.

XII. SEVERABILITY

To the extent any provision of this Agreement is prohibited by (or deemed invalid under) applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

XIII. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties with respect to the services to be provided hereunder and incorporates all undertakings and representations relied upon in reaching such Agreement. This Agreement shall not be modified, amended, abridged, or otherwise varied except by written instrument duly executed by an authorized representative of Client and an officer of ALCS; provided, however, that the Order entered by the Bankruptcy Court authorizing Client's retention and employment of ALCS governs such employment, and, to the extent of any inconsistency between this Agreement and the Order of the Bankruptcy Court, Client and ALCS understand that the provisions of the Order shall govern.

XIV. WAIVER

No failure or delay on the part of either party in exercising any right or remedy with respect to a breach of this Agreement by the other party shall operate as a waiver thereof or of any prior or subsequent breach of this Agreement by the breaching party, nor shall the exercise of any such right or remedy preclude any other or future exercise thereof or exercise of any other right or remedy in connection with this Agreement. Any waiver must be in writing and signed by the waiving party.

XV. COUNTERPARTS

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed to be an original instrument, but all such counterparts together shall constitute one and the same instrument.

XVI. ASSIGNMENT

Neither party may assign this Agreement or any rights or duties under this Agreement without the prior written consent of the other. Any attempted assignment not in accordance with this Section XV shall be null and void.

XVII. BINDING EFFECT

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors, and assigns.

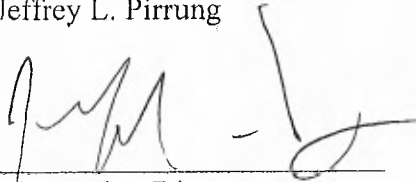
XVIII. CONSTRUCTION

Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular and the singular includes the plural. Wherever the context so requires, the masculine shall refer to the feminine, the feminine shall refer to the masculine, the masculine or the feminine shall refer to the neuter, and the neuter shall refer to the masculine or the feminine. The captions of the Agreement are for convenience and ease of reference only and in no way define, describe, extend, or limit the scope or intent of the Agreement or the intent of any of its provisions. In the event of any conflict between this Agreement and any schedules or exhibits attached to this Agreement, the terms of this Agreement shall control.

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

American Legal Claim Services, LLC

By: Jeffrey L. Pirrung



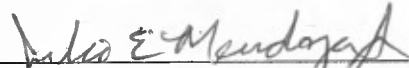
Title: Managing Director

Date:

5/8/2020

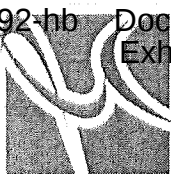
CLIENT: Foxwood Hills Property Owners
Association, Inc.

By: Julio E. Mendoza, Jr.



Title: Attorney for Foxwood Hills
Property Owners Association, Inc.

Date: May 8, 2020



American Legal Claim Services LLC

Hourly Consulting Rates*

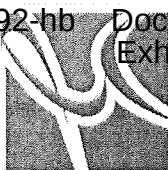
<u>Position</u>	<u>Hourly Rate</u>
Clerical	\$ 45.00
Analyst	\$ 90.00
Consultant	\$140.00
SR Consultant	\$165.00

Case Administration

<u>Function</u>	<u>Rate</u>
Case Database Creation & Setup	Waived
Creditor Database Use	\$.07/Record/Month (waived first 2 months)
Public Website(Case Specific) Hosting	\$100/ month
Imports	\$.10/Record
Manual Data Entry	Hourly Rates
Proof of Claim Entry	Hourly Rates
Reporting	Hourly Rates
Ballot Tabulation	Hourly Rates

Noticing & Document Imaging Functions**

<u>Function</u>	<u>Rate</u>
Setup	Waived
Printing/Copying non-personalized documents	\$.08/Side
Email Notices	Hourly Rates
Fax Service	Domestic-\$.10/ page ~ Foreign-(quoted as needed)
Acknowledgement Post Card	\$.10/Card
Merging Personalized Data into Documents	\$.02/Page Plus Setup at Hourly Rates
Folding and Inserting Machinable Notices That Fit Into #10 Business Envelopes	\$.10/Package(1-3 sheets)~ \$.25/Package (4-6 sheets)
Manual Inserting	Hourly Rates
Tape Binding	\$.50/Booklet (in-line) ~ \$1.25 (off-line)
Electronic Imaging of Claims and Documents to Make Available On Line	\$.10/Image
CD-ROM Creation(batches >5)	Quote Prior to Production
Envelopes	\$.07/#10 Bus. Envelope ~ \$.35/9x13 Bus. Envelope
Notice Publication***	Quote Provided Prior To Publishing



American Legal Claim Services LLC

Schedule of Fees and Expenses-page 2

Call Center Services

<u>Function</u>	<u>Rate</u>
Voice Mail For Creditor Inquiries	Waived
Live Operator	Hourly Rates
Maintenance	Waived
Call Center Management and Oversight	Hourly Rates

Ancillary Functions and Expenses****

<u>Function</u>	<u>Rate</u>
CD Creation (1-5)	\$15.00
Postage	US Postal Service Posted (non-discounted)First-Class Rates
Address Labels	\$.05/Label
Travel	Actual Costs
Fedex/UPS/Courier	Posted Rates
Travel via Personal Auto	\$.55/mile
Out of Pocket Expenses	Actual Costs

*Rates apply to all services provided by American Legal Claim Services, as well as most outsourced services performed under ALCS direction and control. Rates also apply to any additional services performed that are not specifically covered as a line item in this fee schedule. Managing Director time, when necessary, is \$225 per hour.

**American Legal Claim Services reserves the right to discount any project based on volume or any other qualification at their sole discretion. Time associated with managing print production and manual inserting will be charged at hourly rates.

***Payment for publication of legal notices is required prior to ad submission deadline (as defined by agency or publication)

****\$50 will be added to each invoice under \$1,500 and \$150 will be added to each invoice above \$1,500 as partial allocation of the incidental costs associated with the case administration such as telephone lines, Internet service, etc.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

CHAPTER 11

**AFFIDAVIT OF JEFFREY L. PIRRUNG IN SUPPORT OF APPLICATION OF THE
DEBTOR FOR ORDER AUTHORIZATION TO RETAIN AMERICAN LEGAL
CLAIMS SERVICES, LLC AS THE CLAIMS AND NOTICING AGENT
FOR THE DEBTOR IN ACCORDANCE WITH 28 U.S.C. § 156(c), PURSUANT TO SC
LBR 2081-1, *NUNC PRO TUNC* TO THE PETITION DATE**

I, Jeffrey L Pirrung, being first duly sworn, state as follows:

1. I am the Managing Director of American Legal Claims Services, LLC (“ALCS”).

I am over the age of 18 and competent to testify. I am authorized to make this Affidavit (the “**Affidavit**”) on behalf of ALCS. Except as otherwise noted, I have personal knowledge of the matters set forth herein.

2. This Affidavit is made in support of the Application for an Order Authorizing the Debtor to Retain American Legal Services, LLC as Claims and Noticing Agent for the Debtor in Accordance with U.S.C. § 156(c), Pursuant to SC LBR 2081-1, *Nunc Pro Tunc* to the Petition Date (the “**Application**”), filed by Foxwood Hills Property Owners Association, Inc. (the “**POA**”), the debtor and debtor-in-possession in this case.

3. As agent and custodian of the Court records pursuant to 28 U.S.C. § 156(c), ALCS will perform, at the request of the Clerk of this Court (the “**Clerk**”), the notice and claims related services specified in the Application and the Services Agreement attached to it. In addition, at the

POA's request, ALCS will perform such other noticing, claims, administrative, technical and support services specified in the Application and the Services Agreement.

4. ALCS is a data processing firm that specializes in Chapter 11 administration, consulting, and analysis, including noticing, claims processing and other administrative tasks in Chapter 11 cases. ALCS has assisted and advised numerous Chapter 11 debtors in connection with noticing and claims administration.

5. Indeed, ALCS has acted as the official claims, noticing and balloting agent in many large bankruptcy cases in districts nationwide. *See, e.g., In re Think Finance, LLC*, Case No. 17-33964 (HDH) (Bankr. N.D. Tx. 2017); *In re Beaulieu Group, LLC*, Case No. 17-41677 (MGD) (Bankr. N.D. Ga. 2017); *In re Noble Environmental Power, LLC*, Case No. 16-12055 (BLS) (Bankr. D. Del. 2016); *In re Life Care St. Johns, Inc.*, Case No. 3:16-bk-1347 (JAF) (Bankr. M.D. Fla. 2016) *In re Santa Fe Gold Corporation*, Case No. 15-11761 (MFW) (Bankr. D. Del. 2015); *In re Health Diagnostic Laboratories, Inc.*, Case No. 15-32919 (KRH) (Bankr. E.D. Va. 2015); *In re Xinergy Ltd.*, Case No. 15-70444 (PMB) (Bankr. W.D. Va. 2015); *In re MacKeyser Holdings, LLC*, Case No. 14-11550 (CSS) (Bankr. D. Del. 2014); *In re Refco Public Commodity Pool, L.P.*, Case No. 14-11216 (BLS) (Bankr. D. Del. 2014); *In re: Dominion Club, L.C.*, Case No. 11-30187 (KRH) (Bankr. E.D. Va. 2011); *In re The Glebe Inc.*, Case No. 10-71553 (RWK) (Bankr. W.D. Va. 2010); *In re BigM, Inc.*, Case No. 13-10233 (MBK) (Bankr. D.N.J. 2013); *In re Journal Register Company*, Case No. 12-13774 (SMB) (Bankr. S.D.N.Y. 2012); *In re Raser Technologies, Inc.*, Case No. 11-11315 (KJC) (Bankr. D. Del. 2011); *In re Alabama Aircraft Industries, Inc.*, Case No. 11-10452 (LSS) (Bankr. D. Del. 2011); *In re RoomStore, Inc.*, Case No. 11-37790 (KLP) (Bankr. E.D. Va. 2011); *In re Qimonda Richmond, LLC*, Case No. 09-10589 (MFW) (Bankr. D. Del. 2009).

6. At this time, ALCS is acting as the noticing agent in a Chapter 11 case pending before this Court, *In re Sand Castle South Timeshare Owners Association, Inc.*, Case No. 19-02764-jw.

7. The services ALCS proposes to render as claims and noticing agent in this case are described in the Application and in the Services Agreement.

8. Subject to the Court's authorization, in performing the services of claims and noticing agent, ALCS will charge the POA the rates set forth in the Services Agreement. The POA will provide to ALCS a \$7,500 advance deposit retainer to be held under the Services Agreement during the POA's Chapter 11 case as security for the payment of fees and expenses incurred in rendering the services as the claim and noticing agent in this Chapter 11 case.

9. ALCS represents, among other things, that:

- (a) ALCS is not a creditor of the POA as of the filing of this case;
- (b) ALCS will not consider itself employed by the government of the United States of America (the "**U.S. Government**") and shall not seek any compensation from the U.S. Government in its capacity as claims and noticing agent;
- (c) By accepting employment in this bankruptcy case, ALCS waives any right to receive compensation from the U.S. Government, with respect to these cases;
- (d) In its capacity as claims and noticing agent, ALCS may be an agent of the United States Bankruptcy Court for the District of South Carolina and may act on behalf of the Court to the extent prescribed by the Bankruptcy Code; and
- (e) ALCS will not employ any past or present employees of the POA in connection with its work as claims and noticing agent in this Chapter 11 case.

10. Although the POA does not propose in the Application to retain ALCS under 11 U.S.C. §327, to the best of my knowledge, neither ALCS, nor any employee thereof, has any

materially adverse connection to the POA, the POA's creditors or other relevant parties. ALCS may have relationships with certain of the POA's creditors as vendors or in connection with cases in which ALCS serves or has served in a neutral capacity as the claims and noticing agent for another Chapter 11 debtor; however, if so, such relationships are, to the best of my knowledge, completely unrelated to this Chapter 11 case.

11. In addition, ALCS personnel may have relationships with some of the POA's creditors or other parties in interest. However, to the best of my knowledge, such relationships, to the extent they exist, are of a personal nature and completely unrelated to this Chapter 11 case. ALCS has and will continue to represent clients in matters unrelated to this Chapter 11 cases.

12. ALCS also has had and will continue to have relationships in the ordinary course of its business with certain vendors, professionals and other parties in interest that may be involved in the POA's case in matters unrelated to this case. ALCS may also provide professional services to entities or persons that may be creditors or parties in interest in this Chapter 11 case, which services do not directly relate to, or have any direct connection with, this Chapter 11 case or the POA.

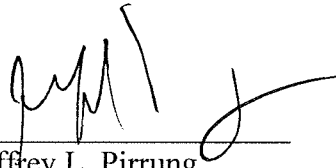
13. Should ALCS discover any new relevant facts or relationships bearing on the matters described herein during the period of its retention, ALCS will use reasonable efforts to file promptly a supplemental Affidavit.

14. Accordingly, to the best of my knowledge, neither ALCS, nor any of its employees, represents any interest materially adverse to the POA's estate with respect to any matter upon which ALCS is to be engaged. Based on the foregoing, I believe that ALCS is a "disinterested person" as that term is defined in §101(14) of the Bankruptcy Code.

15. ALCS will comply with all requests of the Clerk and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c).

16. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge and belief.

Dated: May 8, 2020



Jeffrey L. Pirrung

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re:)	
)	Case No. 20-02092-hb
)	
Foxwood Hills Property Owners)	CHAPTER 11
Association, Inc.,)	
)	
Debtor.)	
_____)	

**ORDER AUTHORIZING THE DEBTOR TO RETAIN AMERICAN LEGAL CLAIM
SERVICES, LLC AS CLAIMS AND NOTICING AGENT FOR THE DEBTOR IN
ACCORDANCE WITH 28 U.S.C. §156(c), PURSUANT TO SC LBR 2081-1, *NUNC PRO
TUNC TO THE PETITION DATE***

THIS MATTER came before the Court on the application (the “**Application**”) of Foxwood Hills Property Owners Association, Inc. (the “**POA**”), the debtor and debtor-in-possession in this case, for authorization to retain and employ American Legal Claim Services, LLC (“**ALCS**”) as the claims and noticing agent in this case in accordance with 28 U.S.C. §156(c), pursuant to SC LBR 2081-1, *nunc pro tunc* to the commencement of the case. The services ALCS is to provide as the claims and noticing agent include, among other things, (i) serving required notices to creditors and parties in interest, (ii) receiving, maintaining, docketing and otherwise administering the proofs of claim filed in the case, and (iii) providing such other administrative services as necessary or appropriate that would otherwise fall within the purview of services to be provided by the Clerk of this Court (the “**Clerk**”).

Based upon the Application, the terms set forth in the Services Agreement attached to the Application, and the Affidavit of Jeffrey L. Pirrung (the “**ALCS Affidavit**”) filed in support of the Application, the Court finds that (a) the Court has jurisdiction over this matter pursuant to 28

U.S.C. §§ 1334 and 157(b) and Local Civ. Rule 83.IX.01 (D.S.C.), (b) venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409, and (c) this matter is a core proceeding pursuant to 28 U.S.C. §157(b). Furthermore, based upon the Application and the ALCS Affidavit, the Court finds that the POA estimates that there are approximately 2,350 creditors and parties in interest in this Chapter 11 case, many of which are expected to file proofs of claim; that numerous notices will be required in this case together with the receipt, docketing and maintaining of proofs of claim, which would be unduly time consuming and burdensome to the Clerk; that, pursuant to SC LBR 2081-1, in Chapter 11 cases in which there are 500 or more creditors and/or parties in interest, unless otherwise ordered, the debtor shall seek to employ a claims and noticing agent in accordance with 28 U.S.C. §156(c), to perform the services that the POA proposes that ALCS provide in this case; that ALCS has the capability and experience to provide such services and does not hold an interest adverse to the POA or the POA's estate in matters upon which ALCS is to be engaged; that good and sufficient notice of the Application has been given and no other or further notice is required; that the employment of ALCS is in the best interests of the POA, its estate and creditors; and that good and sufficient cause exists for authorization of the POA's employment of ALCS as the claims and noticing agent in this case.

Therefore, it is hereby ORDERED that:

1. The Application is GRANTED as set forth herein.
2. Notwithstanding the terms of the Services Agreement attached to the Application, the Application is approved solely as set forth in this Order.
3. The POA is authorized to retain ALCS as the claims and noticing agent in this Chapter 11 case, in accordance with 28 U.S.C. §156(c), pursuant to SC LBR 2081-1, on the terms

and conditions set forth in the Application and Services Agreement, *nunc pro tunc*, to the date of the filing of this case.

4. As the claims and noticing agent in this Chapter 11 case, ALCS is authorized and directed to perform noticing services and to receive, maintain, record and otherwise administer the proofs of claim filed in this Chapter 11 case, and perform all related tasks as described in the Application and the Services Agreement.

5. ALCS shall serve as the custodian of court records and shall be designated as the authorized repository for all proofs of claim filed in this Chapter 11 case, and is authorized and directed to maintain an official claims register for this case and to provide the Clerk of Court with a certified duplicate of the claims register, and/or any of the claims identified in it, upon request of the Clerk.

6. ALCS is authorized and directed to obtain a post office box or address for the receipt of proofs of claim, if necessary or appropriate for the proper and efficient provision of its services in this case.

7. ALCS is authorized to take such other action to comply with its duties set forth in the Application.

8. The POA is authorized to compensate ALCS in the ordinary course of business in accordance with the terms of the Services Agreement upon the receipt of reasonably detailed invoices setting forth the services provided by ALCS and the rates charged for each, and to reimburse ALCS for all reasonable and necessary expenses ALCS may incur, upon the presentation of appropriate documentation, without the need for ALCS to file a fee application or otherwise seek Court approval for the compensation of its services and reimbursement of expenses.

9. ALCS shall maintain records of all services performed, showing dates, categories of services, fees charged and expenses incurred, and shall serve monthly invoices on the POA, the United States Trustee, counsel for the POA, counsel for any official committee appointed in the cases, and any party-in-interest who specifically requests service of the monthly invoices.

10. In the event that a dispute arises relating to the Services Agreement or monthly invoices, the parties to the dispute shall meet and confer in an attempt to resolve such dispute; provided, however, that the parties may seek a determination of the dispute by the Court if resolution is not achieved.

11. Pursuant to 11 U.S.C. §503(b)(1)(A), the fees and expenses of ALCS under this Order shall be an administrative expense of the POA's estate.

12. ALCS may hold its retainer under the Services Agreement during the Chapter 11 case as security for the payment of fees and expenses incurred under the Services Agreement.

13. The POA shall indemnify ALCS under the terms of the Services Agreement, as modified pursuant to this Order.

14. All requests by ALCS for payment of indemnification as set forth in the Services Agreement shall be made by means of an application to the Court and shall be subject to review by the Court to ensure that payment of such indemnity conforms to the terms of the Services Agreement and is reasonable under the circumstances of the litigation or settlement in respect of which indemnity is sought; provided, however, that in no event shall ALCS be indemnified in the case of its own bad faith, self-dealing, breach of fiduciary duty (if any), gross negligence or willful misconduct.

15. In the event that ALCS seeks reimbursement from the POA for attorney's fees and

expenses in connection with the payment of an indemnity claim pursuant to the Services Agreement, the invoices and supporting time records for the attorney's fees and expenses shall be included in ALCS's own applications, both interim and final, but determined by the Court after notice and a hearing.

16. In the event that ALCS is unable to provide the services set out in this Order, ALCS will immediately notify the Clerk and the POA's attorneys and, upon approval of the Court, shall cause all original proofs of claim and computer information to be turned over to another claims and noticing agent with the advice and consent of the Clerk and the POA's attorneys.

17. The POA may submit a separate retention application, pursuant to 11 U.S.C. §327 and or any applicable law, for work that is performed by ALCS but is not specifically authorized by this Order.

18. The POA and ALCS are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

19. At the conclusion of the case, ALCS shall (i) box and transport all original documents, in proper format, as provided by the Clerk's Office, to the location requested by the Clerk, and (ii) docket a completed SF-135 Form indicating the accession and location numbers of the archived claims.

20. ALCS shall not cease providing claims processing services during the Chapter 11 case for any reason, including nonpayment, without an Order of the Court.

21. In the event of any inconsistency between the Services Agreement, the Application and the Order, this Order shall govern.

22. Notwithstanding the possible applicability of Rule 6004(h) of the Federal Rules of

Bankruptcy Procedure, this Order shall be immediately enforceable upon its entry.

23. Notwithstanding any term in the Services Agreement to the contrary, the Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

IT IS SO ORDERED.