

**FOR THE DISTRICT OF SOUTH CAROLINA**

In re:

Sand Castle South Timeshare Owners  
Association, Inc.,

Debtor.

Case No. 19-02764-jw

Chapter 11

**AMENDED AND RESTATED CHAPTER 11 PLAN OF LIQUIDATION**

Filed by Sand Castle South Timeshare Owners Association, Inc.  
Debtor-in-Possession

April 20, 2020

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## PLAN OF LIQUIDATION

Sand Castle South Timeshare Owners Association, Inc. (the “**Association**”), as the debtor and debtor-in-possession in this case, proposes the following Plan of Liquidation, filed on December 18, 2019, as amended and restated herein (the “**Plan**”) pursuant to 11 U.S.C. § 1121.

### ARTICLE I

#### **HISTORY AND OTHER GENERAL INFORMATION RELATING TO THE PLAN**

1.1 **Background.** The Association’s history and background, including a description of the assets of the Estate, are provided on pages 7 through 19 of the Disclosure Statement to Chapter 11 Plan of Liquidation and its attached exhibits filed by the Association on December 18, 2019 (the “**Disclosure Statement**”) in support of this Plan, and in the Addendum to Disclosure Statement filed on April 20, 2020 (the “**Addendum**”). The Disclosure Statement and the Addendum are provided with this Plan.

1.2 **Financial Condition of the Estate.** The information providing the reader with the current and historical financial condition of the Association and its Estate is located in the Disclosure Statement and its attached exhibits, particularly pages 14 through 19 and **Exhibits A, B, C and D** to the Disclosure Statement, and in the Addendum.

1.3 **Proceedings Since the Commencement of the Case.** The Association filed its petition for relief under Chapter 11 of the U.S. Bankruptcy Code (11 U.S.C. § 101 *et seq.*) on May 22, 2019. Information concerning the proceedings in this case is provided in the Disclosure Statement. The Disclosure Statement and the Addendum include information on the progress of this case, the sale of assets proposed in this case, and transactions, income and expenses, and matters occurring subsequent to the filing of the Chapter 11 petition.

1.4 **Definitions.** The following words, terms, and definitions shall be used and apply exclusively for this Plan:

- a. **Acceptance.** A specific class of claims has accepted a plan when the plan has been accepted by those voting individual creditors in that class who hold at least two-thirds (2/3) in amount (\$’s) and more than one-half (1/2) in number (greater than 50%) of the voting individual allowed claims of that class of creditors. A class of interests has accepted a plan if such plan has been accepted by holders of such interest aggregating at least two-thirds (2/3) in the amount of the allowed interest of such class (*e.g.*, number of shares held by shareholders or partners) that have voted on confirmation of such plan. **It is important to note that computation in the confirmation voting process is based only upon the total amount of claims actually voting rather than on claims proven and allowed.**
- b. **Active Owners** shall mean those timeshare owners who were current in their payment of maintenance fees and assessments to the Association as of the filing of this Chapter 11 case on May 22, 2019. The Association is not included in the Active Owners, nor in the Delinquent Owners (defined

below), for the units it owns, because it owed no obligation to pay itself maintenance fees for the units it owns.

- c. **Active Owners' Funds** shall mean sale proceeds of the Condominiums attributable to the ownership interests of Active Owners.
- d. **Administrative Claims Bar Date** means the date by which a creditor or party asserting an administrative priority claim under 11 U.S.C. § 503 must file a motion or application for allowance of its claim, unless the claim has been paid by the Association in the ordinary course of business during the Case. The Administrative Claims Bar Date is the date which is forty-five (45) days after the closing of the sale of the Condominiums.
- e. The **Adversary Proceeding** shall mean the adversary proceeding filed by the Association seeking partition as to the Condominiums, to enable their sale; sale of co-owned property under 11 U.S.C. § 363(h); setoff of the indebtedness of Delinquent Owners to the Association against the portion of the sale proceeds of the Condominiums that would otherwise go the such Delinquent Owners; and quiet title, to eliminate potential interests which might otherwise cloud title to the Condominiums. The Adversary Proceeding is designated number 19-80101-jw in the Court.
- f. **Approved Claim** or **Allowed Claim** shall mean each individual creditor's claim or claim of interest whose validity is accepted by the Association for payment, or if challenged by the Association, a claim which is ultimately proved by that claimant and approved by the Court after notice. Some claims by law can be approved only by the Court for payment, *e.g.*, administrative priority claims.
- g. The **Assets** shall mean substantially all assets now owned by the Estate, including but not limited to all interests in real estate and all personalty, contract rights, permits, intellectual property, and intangible assets owned by the Association.
- h. The **Association** shall mean Sand Castle Timeshare Owners Association, Inc.
- i. The **Association Funds** shall mean the sale proceeds of the Condominiums retained by the Association and used to pay its costs, expenses and creditors.
- j. **Assumption Amounts** shall mean the payment amounts required for the assumption of executory contracts and leases under 11 U.S.C. § 365(b).
- k. The **Bankruptcy Code** shall mean Title 11 of the United States Code of Laws, known as the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.*

- l. The **Bidding Procedures Motion** shall mean a motion filed by the Association seeking an order (1) establishing bidding and other procedures in connection with the sale of the Condominiums and/or substantially all assets of the Estate, and (2) granting certain protections to the proposed purchaser of the assets in the Sale Motion.
- m. The **Bidding Procedures Order** shall mean an order of the Court (1) establishing bidding and other procedures in connection with the sale of the Condominiums and/or substantially all assets of the Estate, (2) granting protections to the proposed buyer, and (3) scheduling a hearing on the proposed sale, entered upon the Bidding Procedures Motion.
- n. The **Board** shall mean the Board of Directors of the Association. At present, the Board is comprised of Herbert H. Patrick, Jr., a/k/a Butch Patrick, who also serves as President of the Association; Kyle Smith, who serves as Secretary and Treasurer; and Mike Pawlowski, who serves as Vice-President.
- o. The **Case** shall mean the bankruptcy case of Sand Castle South Timeshare Owners Association, Inc., Case No. 19-02764-jw in the United States Bankruptcy Court for the District of South Carolina.
- p. **Cash on Hand** shall refer to that cash available, on or immediately after confirmation, and which is in the Association's possession, or which has been derived from the disposition of assets of the bankruptcy estate or from the operations of the bankruptcy estate.
- q. **Chapter 7** shall mean a hypothetical case that is administered under 11 U.S.C. § 700, *et seq.*, wherein an estate identical to the Association's Chapter 11 estate, with identical assets and liabilities, is liquidated by a Chapter 7 trustee.
- r. **Chapter 11** shall mean a case administered under 11 U.S.C. § 1101, *et seq.* In this Case, the Plan provides for the sale of substantially all assets of the Estate to a third-party purchaser and the use of the sales proceeds for the payment of the administrative expenses and costs of this case, the secured creditor and a potential distribution to unsecured creditors.
- s. **Cherokee Motels** shall mean Cherokee Motels, Inc., a creditor of the Association and a potential purchaser of the Condominiums.
- t. **Claim of Interest** shall mean any claim of ownership interest in the Association, whether actual, or contingent. An interest may exist in the form of equity securities (e.g. shareholders' interest), partnership interest, membership interest, or proprietorship interest.
- u. **Claims** shall mean any right or claim to a right to receive payment of monies or other property from the Debtor or the Debtor's bankruptcy estate.

“Claims” can include a right to an equity interest in the debtor in a bankruptcy case.

- v. **Class of Claims** shall mean a classification of claims or interests that are substantially identical in kind or nature and which are grouped together without any unfair discrimination for payment or other treatment by this Plan. The classes of claims are set forth in Article III of this Plan, with a statement of the Plan’s treatment and provisions for the creditors in each class.
- w. The **Code** is 11 U.S.C. §§ 101, et seq., the “Bankruptcy Code”.
- x. The **Condominiums** means the 40 condominiums in the Timeshare Plan, which comprise the 9<sup>th</sup> and 11<sup>th</sup> floors of the Sand Castle South resort building located at 2207 South Ocean Boulevard, Myrtle Beach, South Carolina, and which are identified as Unit Numbers 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 914, 915, 916, 917, 918, 919, 920, 921, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1114, 1115, 1116, 1117, 1118, 1119, 1120 and 1121 of the Sand Castle Horizontal Property Regime established pursuant to the Master Deed.
- y. **Confirmation** of this Plan shall be effective when the Court enters an order approving the Plan for it to become effective, after the Court has found that: (1) the Plan has been accepted by the requisite number of creditors and parties of interest eligible to vote for confirmation of the Plan, (2) the Plan is feasible, (3) the Plan is fair and equitable, (4) the Plan does not unfairly discriminate against creditors or interest holders, and (5) the Plan meets all of the other requirements of 11 U.S.C. §§ 1123, 1126, and 1129.
- z. The **Court** shall mean the United States Bankruptcy Court for the District of South Carolina.
- aa. The **Debtor** shall mean Sand Castle South Timeshare Owners Association, Inc., which is the Debtor in this case.
- bb. **Delinquent Owners** shall mean timeshare owners who were not current and who owed past due amounts to the Association for maintenance fees and assessments as of the date of the filing of this case on May 22, 2019. The Association is not included in the Delinquent Owners, nor in the Active Owners, for the units it owns, because it had no obligation to pay itself maintenance fees for the units it owns.
- cc. The **District Court** shall mean the United States District Court for the District of South Carolina.
- dd. **Effective Date of Plan** shall mean the date the Order Confirming Plan is entered with the Clerk of Court, U.S. Bankruptcy Court for the District of



South Carolina, upon which date the Plan shall be deemed effective as to all parties.

- ee. The **Estate** shall mean the Chapter 11 bankruptcy estate of the Debtor.
- ff. **Executory Contracts** shall mean all contracts or agreements not completed and to be performed or satisfied by the parties in the future.
- gg. **Final Consummation** shall refer to the date and time at which provisions of the Plan have been fully implemented, either by payment, conveyance, the issuance of instruments, or other acts required or contemplated by the Plan, and all payments required under the Bankruptcy Code, statutes governing bankruptcy matters, and orders of the Court have been made. It should be noted that the Court may enter a Final Decree closing the Case prior to the Association's completion of performance under the Plan and prior to final payment to creditors under the Plan, upon a showing of substantial consummation, *i.e.*, that the Plan is being implemented pursuant to its terms.
- hh. **Impaired Class** shall mean a class of claims given under this Plan less than the full amount of the filed and approved individual claims in the class, or a class of claims as to which contract rights are modified or compromised by the Plan; provided, however, that any Court-approved rejection of an executory contract or lease shall not in itself be deemed to render a class impaired. In the case of a rejected contract or lease, the Plan's treatment of the claim (if any) resulting from the rejection will determine whether or not the class is impaired. **Notwithstanding any other provision of this section, a class that is unimpaired under this Plan is deemed by law to have accepted this Plan, and solicitation of acceptances with respect to such class is not otherwise required. 11 U.S.C. § 1126(f).**
- ii. **LaTour** shall mean LaTour Hotels and Resorts, Inc., the management company employed by the Association for the operation of the property. LaTour is also a creditor of the Association, both for prepetition fees due to it, and for a \$75,000.00 prepetition loan it made to the Association for fund the initial costs to file this Case.
- jj. The **Master Association** shall mean the Sand Castle South Horizontal Property Regime, which was created under the Master Deed, is responsible for the operation and maintenance of the Sand Castle South building and amenities generally, for the benefit of all owners of units in the building (*i.e.*, not just the Condominiums under the Timeshare Plan).
- kk. The **Master Deed** shall mean that certain Master Deed for Sand Castle South Horizontal Property Regime filed on June 16, 2006 and recorded in Deed Book 3114, at Page 478, *et seq.*, in the Office of the Register of Deeds for Horry County, South Carolina, as amended and supplemented. The

Sand Castle South building and property are located at 2207 South Ocean Boulevard, Myrtle Beach, South Carolina.

- ll. **Personalty Leases** shall mean all leases between the Debtor and third parties for the use of any and all personal property.
- mm. The **Plan** shall mean this Chapter 11 Plan of Liquidation filed by the Association on December 18, 2019, as amended and restated herein, pursuant to 11 U.S.C. § 1121.
- nn. **Priority and Administrative Claims** shall mean all claims entitled to priority status under 11 U.S.C. §§ 507 and 364 or other specific provisions of the Code. These claims include, but are not limited to, generally, all costs and expenses incurred during the liquidation proceeding which are necessary or for the benefit of the bankruptcy estate; all wages, salaries or commissions allowed priority status under 11 U.S.C. § 507(a)(4) which were owed by the Association at the time of filing up to \$12,850.00 per claimant; allowed unsecured claims of individuals, to the extent of \$2,850.00 for each such individual, arising from the deposit, before the commencement of the Case, of money in connection with the purchase, lease or rental of property, or the purchase of services, for the personal, family, or household use of such individuals, that were not delivered or provided, under 11 U.S.C. § 507(a)(7); all post-petition wage claims due at confirmation; all taxes owing to the United States, any individual State or local taxing authority which are entitled to priority status under 11 U.S.C. § 507(a)(8); all post-petition debts incurred in the ordinary course of business and unpaid since the commencement of this Case; any unpaid fees due to the United States Trustee in this Case; all other statutory costs or fees assessed or assessable by the Court; and any claims given priority status during this proceeding by specific order of the Court.
- oo. **Property to be Dealt With by the Plan** shall refer to the property that is described in Article V of the Disclosure Statement, and full ownership of the Condominiums.
- pp. **Realty Leases** shall mean all valid, enforceable leases of real estate between the Debtor and other parties.
- qq. The **Remainder Funds** shall mean that amount of Association Funds, if any, remaining after payment by the Association of all of its expenses and creditors.
- rr. The **Sale Motion** shall mean a motion for an order (1) authorizing the sale of all or substantially all assets of the Estate free and clear of liens, claims, encumbrances and other interests pursuant to 11 U.S.C. §§ 363(b)(1) and (f), and (2) approving the assumption and assignment of certain unexpired executory contracts and leases designated for assignment to a purchaser, if

any, pursuant to 11 U.S.C. §§ 365(b)(1) and (f). In this Case, it is anticipated that the Sale Motion would provide for the sale of the Condominiums, without the assumption and assignment of any executory contracts or leases.

- ss. **Secured Claim** shall mean each individual claim completely or partially secured by real estate mortgages, security agreements, assignment agreements, consignment agreements, chattel mortgages, recorded lease-purchase agreements, liens, setoff, or any other legal encumbrance which is entitled to secured status under applicable state or federal law.
- tt. The **Stalking Horse Bidder** shall mean, in the context of a proposed sale, the proposed purchaser of the property to be sold, who has entered into a contract with the Debtor (the “**Stalking Horse Bid**”) subject to approval by the Court, and which Stalking Horse Bid will be subject to potential competing offers for the property. The Stalking Horse Bidder often is granted special protections for its Stalking Horse Bid, such as a minimum require overbid amount (the amount by which a competing offer/bid for the property must exceed the Stalking Horse Bid), requirements for competing bids by other potential purchasers, and reimbursement of certain of its expenses in connection with the Stalking Horse Bid.
- uu. **Substantial Consummation** shall refer to that date and time on which the sale or transfer of all or substantially all of the property proposed by the Plan to be sold or transferred has been achieved, and, the Association has commenced the distribution of payments to creditors under the Plan.
- vv. The **Timeshare Plan Declaration** shall mean that certain **Supplemental Declaration for the Sand Castle South Timeshare Ownership Plan** filed on June 22, 2007 and recorded in Deed Book 3255, at Page 567, *et seq.*, in the Office of the Register of Deeds for Horry County, South Carolina.
- ww. The **Timeshare Plan** shall mean the terms and provisions for ownership of timeshare interests, sometimes referred to as interval ownership, and rights of use in the Condominiums and common areas and amenities under the Timeshare Plan Declaration, and all attendant and related rights and obligations thereunder.
- xx. The **Timeshare Regime** shall mean the Timeshare Plan.
- yy. **Unimpaired Class** shall mean a class of claims for which the claim rights are not altered by this Plan, or which is entitled to and shall receive under the Plan full satisfaction of its filed and approved claims as required by the Code. **Unimpaired classes are deemed to have accepted this Plan by specific provision of the Code and solicitation of acceptances of the Plan by any such class from the holders of claims or interest of such class is not required. 11 U.S.C. § 1126(f).**

zz. **Unsecured Claims** shall mean all claims against the Association other than Secured Claims, Priority and Administrative Claims, or Claims of Interest.

**NOTE: The defining of the various parties of interest and claimants against this Estate in no way imputes any relative priority among them nor is it to be construed to validate or approve any of their claims.**

## ARTICLE II

### PLAN OF LIQUIDATION

2.1 Preface. In reviewing the Plan, the reader should understand what is meant by “impairment”. An “impaired” class of creditors shall mean a class of claims given under the Plan less than the full amount of the filed and approved individual claims in the class, or a class of claims as to which contract rights are modified or compromised by the Plan. An “unimpaired” class shall mean a class of claims whose rights are not affected under the Plan, or which is entitled to and will receive under the Plan full satisfaction of its filed and approved claims as required by the Bankruptcy Code. A class of claims shall not be deemed to be impaired, however, solely by virtue of any Court-approved rejection of an executory contract or lease; for any creditor whose executory contract or lease has been rejected under 11 U.S.C. § 365, the Plan’s treatment of the claim (if any) resulting from the rejection will determine whether or not the class is impaired.

#### 2.2 Overview of Plan Provisions.

The Plan provides for the sale of the Condominiums and the payment of the sale proceeds, after payment of costs (including the costs and administrative expenses of this Case), to creditors. The sale is to be made pursuant to the provisions and process under new S.C. Code § 27-32-520, which allows for termination of a timeshare plan, the partition of the property to enable a sale conveying consolidated title (as opposed to fractional ownership) of the property to a buyer, and then a sale to a buyer. As discussed in the Disclosure Statement, the Association has already terminated the Timeshare Plan Declaration and the Timeshare Plan. It is now proceeding with the partition of the Condominiums to enable their sale.

The sale of the Condominiums is for four essential purposes: first, to terminate continued accrual of expenses that can never be paid; second, to terminate the obligations of owners to pay maintenance fees and/or assessments; third, to provide a source for payment, to the extent possible, of creditors; and fourth, to abate and avoid public safety and health issues regarding property that would otherwise deteriorate and possibly develop environmental issues, *e.g.*, mold.

The Association has filed an adversary proceeding (the “**Adversary Proceeding**”) alleging causes of action for partition, for sale of co-owned property under 11 U.S.C. § 363(h) (this cause of action should be unnecessary, but was included as a safeguard), for setoff of the indebtedness of Delinquent Owners to the Association against the portion of the sale proceeds otherwise payable to those Delinquent Owners, and for quiet title, to remove any issues of possible interest in the property. The Adversary Proceeding will not effectuate a sale of the Condominiums; it is to enable a sale of the Condominiums.

The Association does not own the Condominiums; it does, however, own a substantial percentage of the ownership interests in the Condominiums. By the setoff action in the Adversary Proceeding, the Association will be entitled to receive and retain the sale proceeds otherwise payable to the Delinquent Owners. The sale proceeds retained by the Association will serve as the source for payment of creditors other than Horry County, South Carolina, which will be paid at the closing of the sale (*i.e.*, prior to the Association's retention of sale proceeds) for its lien for *ad valorem* taxes (property taxes) on the Condominiums.

After completion of the Adversary Proceeding, the Condominiums will be sold under a motion for authorization under 11 U.S.C. §§ 363(b)(1) and (f). The Association will sell the Condominiums to the buyer(s) offering the highest and best value for them, subject to authorization by the Court. It is presently contemplated that the sale of the Condominiums will be made to a single buyer; however, if necessary or appropriate to realize the best obtainable value for the Estate, the Condominiums may be sold to more than one buyer, and in more than one transaction. The Association will obtain authorization for each sale transaction by an order of the Court, with the exception of sale transactions involving assets being sold for a price of \$7,500.00 or less.

The sale proceeds, after payment of costs and Horry County, if any, will be divided into two portions: (1) the sale proceeds attributable to the ownership interests in the Condominiums owned by the Association, and the sale proceeds otherwise due to Delinquent Owners for their ownership interests, will be retained by the Association and used for the payment of creditors (such sale proceeds being the "**Association Funds**"); and (2) the sale proceeds attributable to the ownership interests of Active Owners (the "**Active Owners' Funds**") will be remitted to the Active Owners.

The Association projects that it will receive sufficient funds from the sale to pay the costs of sale (including the costs and administrative expenses of this Case), the secured claim of Horry County and, possibly, make a small payment to its creditors. The Active Owners will receive the portion of the sale proceeds attributable to their respective ownership interests in the Condominiums. The actual payment amounts will not be known until the sale of the Condominiums has been accomplished.

The Association will file any objections it asserts to filed claims in this Case no later than thirty (30) days after confirmation of the Plan.

a. The Sale of the Condominiums.

The Association's sale of the Condominiums will provide the source of payment of its debts. The sale of the Condominiums will be made under a Sale Motion and a Bidding Procedures Motion, after the Adversary Proceeding has been completed to enable sale of consolidated title to the property. The sale shall be made free and clear of all liens, claims, encumbrances and other interests under 11 U.S.C. §§ 363(b)(1) and (f), so that the purchaser(s) will acquire full title to the Condominiums. Although it is contemplated that the sale will be made to one purchaser of all units, it is possible that the Association may determine it better to sell to more than one purchaser and proceed on that basis. All creditors and parties in interest will receive notice of any proposed sale. The Association presently projects that it should be able to close the sale of the

Condominiums during June or July of 2020.

The sale proceeds will be used, first, to pay the secured claim of Horry County (for *ad valorem* taxes on the property); second, to pay the costs and administrative expenses incurred by the Association in these matters (including a reserve to cover projected costs to complete this Case); third, if funds exist after such payments, for division between the Association Funds (which include, by setoff, amounts that would be otherwise payable to Delinquent Owners) and the Active Owners' Funds; fourth, from the Association Funds, if any, to pay priority unsecured claims (other than administrative priority claims, which are senior in priority to these priority claims) against the Estate, if any; fifth, from the Association Funds, if any, to pay non-priority unsecured claims against the Estate on a pro rata basis; and, finally, if Association Funds remain after payment of all of the Association's debts ("**Remainder Funds**"), the Remainder Funds will be distributed to the Active Owners on a pro rata basis.

Active Owners will receive payment of the Active Owners' Funds, regardless of whether there are Remainder Funds. Any Remainder Funds distributed to Active Owners will be in addition to the Active Owners' Funds.

The Condominiums will be sold by private sale (pursuant to authorization obtained from the Court after notice to all creditors and owners) within one year after entry of the judgment for partition in the Adversary Proceeding. In the event that no sale to a buyer under a contract of sale or asset purchase agreement is achieved within one year after entry of the partition judgment, the Association will arrange an auction sale of the Condominiums by a qualified auction company. The auction will be conducted within sixty (60) days after the expiration of the one year period for a private sale. The distribution of the sale proceeds shall be made the same as under a private sale.

Although the sale may occur after confirmation of the Plan, the Court shall retain jurisdiction over the approval of the sale and issues arising regarding the sale under the Sale Order.

b. Sales of Assets Having a Sale Price of \$7,500.00 or Less.

In addition to the sale of the Condominiums, the Association will liquidate its assets, to the extent possible, for payment of expenses and creditors. It is believed that the assets have very limited realizable value.

Upon confirmation of this Plan, for sales of assets having a sale price of \$7,500.00 or less, which sale price represents the aggregate price for all items included in the sale, the Association shall not be required to serve notice of the sale or notice of a motion to authorize the sale on any parties other than the ten largest creditors of the Estate, any secured creditor affected by such sale, the United States Trustee and any party claiming an interest in the asset being sold. Including the former timeshare owners, there are over 700 creditors and parties in interest on the mailing list in this Case, and the cost of serving notice of a sale of \$7,500.00 or less would consume a disproportionate amount of the sale proceeds. Accordingly, the sale notice is hereby streamlined for sales having a sale price of \$7,500.00 or less. **Note: It is not known whether the Association will be able to sell any assets separate from the Condominiums. This provision is simply to assure that if a sale of assets having small value becomes possible, the sale may be made to realize value for the estate.**

c. Reservation of Funds for Completion of Administration of the Case.

In the event that the administration of this Case has not been completed by the date of the distribution to non-priority unsecured creditors in Class 2, as provided below in § 2.5 and in Article III of this Plan, the Association shall reserve funds from the Association Funds in an estimated amount to cover the projected costs to complete the administration of the Case, including any litigation costs. The projection of costs shall take into account the likelihood of additional recoveries for the Estate. At the conclusion of the administration of the Estate, the Association shall distribute any remaining funds to creditors according to their respective rights under the Bankruptcy Code, or, if Remainder Funds, to the Active Owners.

d. The Existing Board Shall Manage the Consummation of the Plan;  
Possible Appointment of Special Counsel with Regard to  
Possible Avoidable Preferences and Oversight Committee.

The currently existing Board shall remain in place and manage the Association through the consummation of the Plan. The Board shall also be responsible for the post-confirmation reports and in arranging payment of the United States Trustee Quarterly Fees by the Association through the closing of the Case. In the event that a vacancy should arise among the three members of the Board, the remaining members shall attempt to find a replacement member for the departed/departing Board member. All members of the Board shall act in the best interests of the Association and its members, in working to consummate the Plan.

In the event of an extraordinary change in circumstances that would warrant, in sound business judgment, a change in the approach to the liquidation and winding up of the Association, the Board members shall have the rights and powers to act appropriately in addressing such change in circumstances.

An exception to the Board's control over post-plan confirmation matters exists with regard to potential preference avoidance actions under 11 U.S.C. § 547(b). Because two creditors, LaTour, an insider, and Cherokee Motels, a potential purchaser of the Condominiums, received payments from the Association during the period of potentially avoidable preferences, the Board will solicit responses among the non-insider creditors as to their willingness to have special counsel appointed to explore and possibly pursue avoidance actions, and to oversee such special counsel as a liquidation committee under the Plan. It should be noted that, if such a liquidation committee is formed, it will not be pursuant to 11 U.S.C. § 1102 (regarding official creditors' committees appointed by the United States Trustee, as approved by the Court), but a committee formed under the provisions of this Plan. Such special counsel will be paid from any recoveries he or she obtains for the estate, and not from the proceeds of the sale of the Condominiums.

2.3 Payment of Administrative Priority Claims. Pursuant to 11 U.S.C. § 1129(a)(9)(A), allowed claims entitled to administrative priority pursuant to 11 U.S.C. §§ 503(b) and 507(a)(2) must be paid upon the effective date of the Plan, or upon authorization by the Court, unless the administrative priority claimants agree to accept a different treatment of their claims. The administrative priority claims will be paid from the sale proceeds of the Condominiums, as a cost of the sale of them. The timing of the sale, and thus the payment, is uncertain; however, there being no other source of payment, the Association is informed and believes that the holders of

such claims in this case consent to payment at closing of the sale. Due to the requirements for payment of allowed administrative priority claims, this class is not designated as impaired.

A deadline for filing administrative claims is set (the “**Administrative Claims Bar Date**”) for forty-five days after the closing of the sale of the Condominiums; provided, however, that the Administrative Claims Bar Date may be extended if warranted by unresolved issues regarding the sale or the Plan provisions. Final fee applications of professionals employed by the Estate must be filed by the Administrative Claims Bar Date. The Court shall retain jurisdiction to rule on the allowance or disallowance of administrative claims.

2.4 **Payment Provisions Regarding Secured Claim.** Only one secured creditor exists under the Plan, **Horry County, South Carolina** for the lien it holds on the property for unpaid *ad valorem* taxes. It is **Class 1** under the Plan. Class 1 shall be paid at the closing of the sale of the Condominiums. Class 1 is **impaired** due to the uncertain timing of the sale and payment. Interest will continue to accrue on the tax debt secured by the property until payment is made. It should be noted that Horry County would also be entitled to payment as a priority claim holder under 11 U.S.C. § 507(a)(8) were it deemed not to be a secured creditor.

2.5 **Plan Treatment of the Master Association and Executory Contracts and Leases.**

a. The Master Association holds a claim against the Association for maintenance fees and assessments due from the timeshare owners. The Association included in its maintenance fees due from timeshare owners an amount to cover the maintenance fees due to the Master Association. The non-payment of maintenance fees by the Delinquent Owners resulted in a balance due to the Master Association. The balance due to the Master Association is a non-priority unsecured claim against the Estate. It shall receive payment as a claim under Class 2.

b. The claims of the executory contracts and leases to which the Association is a party shall each be deemed rejected by and upon confirmation of this Plan. The claims of the contracting parties for obligations owed to them under their respective executory contracts and/or rejection damages are non-priority unsecured claims against the Estate. They shall receive payment as claims under Class 2.

2.6 **Payment Provisions for Priority Creditors.** The Association is informed and believes that no priority claims exist in this case, other than possibly the claim of Horry County, South Carolina for unpaid *ad valorem* taxes on the Condominiums, which claim is also a secured claim and treated as a secured claim. In the event that a priority claim is filed against the Estate and allowed, it will be treated in accordance with 11 U.S.C. § 1129(a)(9). If insufficient funds exist to pay all priority claims (other than administrative priority claims, which are senior in priority), the priority creditors shall share pro rata in the funds available for payment to them after the administrative priority claims. The Association will file any objections it asserts to filed claims within thirty (30) days after confirmation of the Plan.

2.7 **Payment Provisions for Non-Priority Unsecured Creditors.** **Class 2** of the Plan consists of the general **non-priority unsecured claims** against the Estate. This class is **impaired**. The creditors in Class 2 will receive payment after any priority claims have been paid, and Class 2 claims will be paid on a pro rata basis from the Association Funds. The



Association will make the distribution to Class 2 within 90 days after the closing of the sale of the Condominiums becomes final. Whether funds shall exist for payment to Class 2 creditors, and the amount available (if any), will be determined primarily by the sale price realized for the Condominiums. The Association will file any objections it asserts to filed claims within thirty (30) days after confirmation of the Plan.

2.8 Active Owners' Claims for Ownership Interests in the Condominiums. **Class 3** is comprised of the claims of **Active Owners for their ownership interests in the Condominiums**. After payment of the secured claim of Horry County and payment of the Association's costs (including the administrative expenses of this Case), the sale proceeds of the Condominiums will be divided into the Association Funds and the Active Owners' Funds, and the Active Owners will receive payment of their respective share of the Active Owners' Funds based on their owned interest in the Condominiums. The Active Owners shall not receive payment from the Association Funds unless there are Remainder Funds, in which event the Active Owners shall receive payment of any Remainder Funds on a pro rata basis. Class 3 is **impaired**. The timing and amount of payment is uncertain, pending a sale of the Condominiums. The right to receive payment under Class 3 shall not depend on the filing of a claim in this Case, but, instead, is based on the former timeshare owner being an Active Owner.

2.9 Delinquent Owners' Claims for Ownership Interests in the Condominiums. **Class 4** is comprised of the claims of **Delinquent Owners for their ownership interests in the Condominiums**. Class 4 is **impaired**. The Delinquent Owners' indebtedness to the Association for unpaid maintenance fees and assessments shall be set off against the share of sale proceeds of the Condominiums that the Delinquent Owners otherwise would be entitled to receive, as payment of the unpaid amounts to the Association. The Delinquent Owners shall receive no payment or distribution from the Association or the Estate.

2.10 Equity Interests. **Class 5** is comprised of the interests of the former timeshare owners in the Association, as members of the Association, and the interests of any person or entity claiming rights in equity interests of or in the Association. Class 5 is **impaired**. The Class 5 member rights are terminated upon consummation of the Plan and the entry of a Final Decree closing the Case.

### ARTICLE III

#### **CLASSIFICATION OF CREDITORS AND PARTIES IN INTEREST AND PROVISIONS OF TREATMENT OF EACH CLASS OF CREDITORS AND PARTIES IN INTEREST BY THE PLAN**

The following is a definition of each Class of Claims and Interest, and the provisions of treatment of each Class of Claims or Interest under the Plan:

3.1 Class 1: Horry County, South Carolina. This class consists of Horry County for the lien it holds on the property for unpaid *ad valorem* taxes. Class 1 shall be paid at the closing of the sale of the Condominiums. Class 1 is **impaired** due to the uncertain timing of the sale and payment. Interest will continue to accrue on the tax debt secured by the property until

payment is made. It should be noted that Horry County would also be entitled to payment as a priority claim holder under 11 U.S.C. § 507(a)(8) were it deemed not to be a secured creditor.

3.2 Class 2: Non-Priority Unsecured Claims. This class is **impaired**. The creditors in Class 2 will receive payment after any priority claims have been paid, and Class 2 claims will be paid on a pro rata basis from the Association Funds. The Association will make the distribution to Class 2 within 90 days after the closing of the sale of the Condominiums becomes final. It is uncertain that any funds will be available for payment of Class 2 creditors; payment, and amount of payment, will depend primarily on the sale price realized for the Condominiums.

3.3 Class 3: Active Owners' Ownership Interests in the Condominiums. After payment of the secured claim of Horry County and payment of the Association's costs (including the administrative expenses of this Case), the sale proceeds of the Condominiums will be divided into the Association Funds and the Active Owners' Funds, and the Active Owners will receive payment of their respective share of the Active Owners' Funds based on their owned interest in the Condominiums. The Active Owners shall not receive payment from the Association Funds unless there are Remainder Funds, in which event the Active Owners shall receive payment of any Remainder Funds on a pro rata basis. Class 3 is **impaired**. The timing and amount of payment is uncertain, pending a sale of the Condominiums. The right to receive payment under Class 3 shall not depend on the filing of a claim in this Case, but, instead, is based on the former timeshare owner being an Active Owner.

3.4 Class 4: Delinquent Owners' Ownership Interests in the Condominiums. This class is **impaired**. The Delinquent Owners' indebtedness to the Association for unpaid maintenance fees and assessments shall be set off against the share of sale proceeds of the Condominiums that the Delinquent Owners otherwise would be entitled to receive, as payment of the unpaid amounts to the Association. The Delinquent Owners shall receive no payment or distribution from the Association or the Estate.

3.5 Class 5: Equity Interests. This class is comprised of the interests of the former timeshare owners in the Association, as members of the Association, and the interests of any person or entity claiming rights in equity interests of or in the Association. Class 5 is **impaired**. The Class 5 member rights are terminated upon consummation of the Plan and the entry of a Final Decree closing the Case.

## ARTICLE IV

### **FEASIBILITY OF PLAN**

Section 1129(a)(11) of the Bankruptcy Code (11 U.S.C. §101, *et seq.*) requires that in order for a plan to be confirmed, it must be demonstrated that the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor of the debtor under the plan, unless such liquidation or reorganization is proposed in the plan. The Plan satisfies this requirement.

The Plan provides for the sale of the Condominiums. There are no other assets of the Estate having significant, realizable value.

The Association is proceeding with the steps necessary for a sale of the Condominiums, not as timeshare property but as property available for other uses consistent with the uses of other parts of the Sand Castle South building. The sale is the source for the payments to creditors under the Plan. The Plan's provisions involve no material risk to creditors. There is a reasonable probability that the Plan will be fully consummated by its terms. Therefore, the Plan satisfies the requirement of 11 U.S.C. § 1129(a)(11).

## **ARTICLE V**

### **STATUS OF THE DEBTOR AFTER CONFIRMATION**

After Confirmation of this Plan, any and all leasehold rights and contract rights of the Association which have not been sold or assigned to a purchaser or another party shall be terminated. In addition, the Plan expressly reserves the Association's right to challenge the validity and enforceability of all contracts, leases, and claims against the Estate which have not been previously addressed.

From and after Confirmation of this Plan, the Estate is exonerated from any and all claims not filed by a creditor or claimant of interest against the Estate prior to the date set by the Court. The Estate will, from and after Confirmation of this Plan, be indebted for, and obligated to pay, only (1) those liabilities and obligations set forth in Article III of this Plan, upon the provisions of this Plan, (2) United States Trustee Quarterly Fees until the Case is closed, dismissed or converted to Chapter 7, and (3) administrative expenses incurred in the Case.

Any defaults whatsoever, with respect to any such indebtedness or obligations, or in the terms and conditions thereof, which are or may be based on events, facts, or occurrences taking place on or before the date of Confirmation, lapse of time, or both, would take place or be deemed to take place on or before such date and shall be deemed to have been waived and shall not thereafter be a basis for the exercise by any person for any right or remedy whatsoever, as a creditor or claimant against the Estate.

## **ARTICLE VI**

### **EXECUTORY CONTRACTS**

Effective upon the Date of Confirmation of this Plan, all and existing executory contracts, agreements, and leases to which the Association is a party shall be deemed rejected.

## **ARTICLE VII**

### **JURISDICTION**

7.1 Retention of Jurisdiction. The Court shall retain jurisdiction over the Estate, its property, and all other parties appearing in this Case as provided in the Code until entry of the final decree closing this Case. The Court shall retain jurisdiction over matters as necessary or appropriate for the purposes of (i) determining all claims that have been asserted against the Association, or the Estate; and (ii) carrying out and giving effect any and all provisions of the Plan and the Order Confirming Plan. The Court specifically shall retain jurisdiction to rule on the Sale

Motion, any Bidding Procedures Motion, and any issues that arise regarding the sale of the Condominiums under the Order entered upon the Sale Motion.

## ARTICLE VIII

### POST-CONFIRMATION ACTS

8.1 Acts Necessary for Completion and Consummation of the Plan. The Association, and its agents, shall perform all acts necessary to complete and consummate this Plan, to include:

- a. Prosecution of all claims against third parties, and challenge of claims filed against the Estate by third parties;
- b. Execution and filing of all legal documents required;
- c. Filing post-confirmation monthly reports;
- d. Payment of Quarterly Fees due to the United States Trustee until the Case is closed, dismissed or converted to Chapter 7; and
- e. Performing any and all functions required by the Code.

At least thirty (30) days prior to the closing of this Case, the Association shall cause to be filed with the Court a final report stating the receipts and disbursements by the Association after Confirmation.

8.2 Prosecution and Defense of Claims. The Association shall retain full power after Substantial Consummation to prosecute and defend any causes of action or proceedings existing at Substantial Consummation by or against the Estate; resulting from the administration of the Estate; resulting from any other claim by or against the Estate or its assets; or arising prior to or existing before Substantial Consummation, including the collection of outstanding accounts receivable. The Association may use the services of its attorneys and accountants in the prosecution or defense of such claims, and shall have full power, subject to the approval of the Court, to employ, retain, and replace special counsel to represent it in the prosecution or defense of any action. The Association shall have the full right and power to discontinue, compromise, or settle any action or proceeding, or adjust any claim. The net proceeds received from any such litigation by the Association shall be deposited with the Estate for payment of Estate expenses and for payment of the claims against the Estate, or for use in a manner consistent with the provisions of the Plan.

Furthermore, the Association reserves the right to file and pursue any actions to avoid and recover transfers or payments, or to invalidate or challenge the enforceability of transactions and agreements, by use of rights and powers granted to the Association under the Code. The time for filing any such actions shall not be shortened or abridged by confirmation of the Plan.

In regard to the right to pursue avoidance actions, special provision exists under this Plan. Two creditors, LaTour, an insider, and Cherokee Motels, a potential purchaser of the Condominiums, received payments from the Association during the period of potentially avoidable

preferences, and the Board will solicit responses among the non-insider creditors as to their willingness to have special counsel appointed to explore and possibly pursue avoidance actions, and to oversee such special counsel as a liquidation committee under the Plan. It should be noted that, if such a liquidation committee is formed, it will not be pursuant to 11 U.S.C. § 1102 (regarding official creditors' committees appointed by the United States Trustee, as approved by the Court), but a committee formed under the provisions of this Plan. Such special counsel will be paid from any recoveries he or she obtains for the estate, and not from the proceeds of the sale of the Condominiums. This provision shall survive confirmation and Substantial Consummation of the Plan.

## **ARTICLE IX**

### **"CRAM DOWN" FOR IMPAIRED CLASSES NOT ACCEPTING THE PLAN**

With regard to any class of creditors impaired but not accepting the Plan by the requisite majority in number and two-thirds in amount, the proponent of this Plan requests that the Court find that the Plan does not discriminate unfairly and is fair and equitable with respect to each Class of Claims or Interest that is impaired under the Plan, and that the Court confirm the Plan without such acceptances by the said impaired classes.

## **ARTICLE X**

### **DISCHARGE OF THE DEBTOR**

The entry of an Order Confirming Plan acts as a discharge of any and all liabilities of the Association that are dischargeable under 11 U.S.C. § 1141. In this Case, however, because the Plan provides for the liquidation of the Association's assets, the Association will not be entitled to a discharge of its debts. 11 U.S.C. § 1141(d)(3).

/s/ Julio E. Mendoza, Jr.

Julio E. Mendoza, Jr., Fed. ID No. 3365

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April 20, 2020

Columbia, South Carolina

Attorneys for Sand Castle South  
Timeshare Owners Association, Inc.,  
Debtor-in-Possession

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA**

In re:

Sand Castle South Timeshare Owners  
Association, Inc.,

Debtor.

Case No. 19-02764-jw

Chapter 11

**CERTIFICATE OF SERVICE**

I, Julio E. Mendoza, Jr., of Nexsen Pruet, LLC, do hereby certify that a copy of the **AMENDED AND RESTATED CHAPTER 11 PLAN OF LIQUIDATION**, was served upon all parties receiving notification through the Court's ECF/NEF System, and the following party by electronic notification through the Court's ECF/NEF System at the time of filing, on this the 20<sup>th</sup> day of April 2020, at Columbia, South Carolina.

Elisabetta G. Gasparini, Esquire  
Office of the United States Trustee  
1835 Assembly Street, Suite 953  
Columbia, SC 29201

/s/ Julio E. Mendoza, Jr.

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