

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

In re:

Foxwood Hills Property Owners
Association, Inc.,

Debtor.

Case No. 20-02092-hb

Chapter 11

**APPLICATION OF DEBTOR-IN-POSSESSION FOR
AUTHORIZATION TO EMPLOY COUNSEL**

Foxwood Hills Property Owners Association, Inc. (the “**POA**”), as the debtor and debtor-in-possession, hereby applies to the Court for authorization to employ Nexsen Pruet, LLC (“**Nexsen Pruet**”) as counsel for the POA in this case, pursuant to 11 U.S.C. §§ 327(a) and 1107(b) and Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure.¹ In support of the authorization sought herein, the POA respectfully would show to the Court that:

BACKGROUND

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

2. 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 (the “**Community**”), a development located on Lake Hartwell in Oconee County, South Carolina, comprised of approximately 4,100 lots currently owned by approximately 2,350

¹ Hereinafter, references to the Federal Rules of Bankruptcy Procedure shall be made as “Bankruptcy Rule” and the cited rule number.

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.

3. 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.

JURISDICTION

4. The Court has jurisdiction over this application pursuant to 28 U.S.C. §§ 157 and 1334 and Local Civil Rule 83.IX.01, DSC. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A). Venue of these proceedings is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The POA seeks relief herein under 11 U.S.C. §§ 327(a) and 1107(b) and Bankruptcy Rules 2014 and 2016.

RELIEF REQUESTED

6. The POA, as debtor-in-possession, wishes to employ Nexsen Pruet to represent it in this case. Nexsen Pruet has attorneys who are admitted to practice in this Court, and who have extensive experience in matters of the type that will be involved in this case. Moreover, the POA is informed and believes that Nexsen Pruet has attorneys in a wide range of practice areas, which will enable it to address other matters or issues as may be necessary or appropriate.

7. The professional services that Nexsen Pruet will render to the POA may include, but shall not be limited to, the following:

- a. Advising the POA of its rights, powers and duties;
- b. Attending meetings with the POA's representatives and hearings before the Court;
- c. Assisting other professionals retained by the POA in the investigation of the acts, conduct, assets, liabilities and financial condition of the POA, and any other matters relevant to the case or to the formulation of a plan of reorganization or liquidation;
- d. Reviewing and investigating the validity, extent and priority of any secured claims against the POA's estate, and reviewing and investigating the acts and conduct of such secured creditors and other parties to determine whether any causes of action may exist;
- e. Advising the POA with regard to the preparation and filing of all necessary and appropriate applications, motions, pleadings, draft orders, notices, schedules and other documents; drafting, preparing and filing such documents; and reviewing all financial and other reports to be filed in these matters;
- f. Advising the POA with regard to the preparation and filing of responses to applications, motions, pleadings, notices and other papers that may be filed and served in these Chapter 11 cases, and drafting, preparing and filings such responses;
- g. Preparing, filing and representing the POA in one or more adversary proceedings to address the issues described above in paragraph 3 of this Application; and
- h. Performing other legal services for and on behalf of the POA that may be necessary or appropriate in the administration and progress of this Chapter 11 case.

8. Nexsen Pruet intends to apply for approval of compensation for its professional services rendered and reimbursement of expenses it incurs in connection with this Chapter 11 case,

in compliance with the applicable provisions of the Bankruptcy Code, the Local Rules of this Court, orders of this Court and the Guidelines of the Office of the United States Trustee (the “UST”). Nexsen Pruet will charge its normal and customary hourly rates for legal services consistent with the current rates Nexsen Pruet charges in comparable bankruptcy and non-bankruptcy matters.

9. Prior to the commencement of this case, the POA paid Nexsen Pruet for its services on a current basis for the matters leading to, and for the preparations for, the filing of this case. In addition, prior to the filing of the case, the POA provided a retainer to Nexsen Pruet in the amount of \$50,000.00. At this time, the only charge paid from the retainer is the filing fee for this Chapter 11 case. The balance of the retainer is to be used for application towards payment to Nexsen Pruet for post-petition services and costs incurred. Nexsen Pruet shall not use such retainer funds unless and until it has obtained authorization from the Court.

BASIS FOR RELIEF

10. The POA is informed and believes that Nexsen Pruet is a disinterested person as that term is defined by 11 U.S.C. § 101(14), and that Nexsen Pruet does not hold or represent an interest adverse to the estate.

11. To the best of the POA’s knowledge, Nexsen Pruet has no connection with the POA, its creditors, or any party in interest in this case, their respective attorneys and accountants, the UST, or any person employed in the office of the UST, except as follows:

a. Prior to the commencement of this case, Nexsen Pruet represented the POA in analysis of the issues confronting the POA; as co-counsel with other counsel for the POA in litigation over the real property restrictions; and in preparations for the filing of this case.

b. Nexsen Pruet has represented First Citizens Bank and Trust Company, a secured creditor of the POA, in various matters unrelated to the POA or this case. The fees

received by Nexsen Pruet from First Citizens Bank and Trust Company amount to less than One Percent (1.0%) of Nexsen Pruet's annual revenues. Nexsen Pruet is also a tenant of First Citizens Bank and Trust Company, for the firm's Columbia, South Carolina office. Upon information and belief, neither Nexsen Pruet's representation of First Citizens Bank and Trust Company in those other matters nor Nexsen Pruet's lease relationship with First Citizens Bank and Trust Company will adversely impact Nexsen Pruet's representation of the POA in this case.

c. Nexsen Pruet and its attorneys and staff have worked with numerous attorneys, accountants, other professionals, staff persons, and other persons who may, or may not, appear in this and other cases, and Nexsen Pruet's attorneys, staff and employees may have social and professional relationships with various other attorneys and professionals who from time to time appear in matters before this Court, and with members of the Court and Court personnel. Any such relationships or connections are unrelated to this case.

d. From time to time during the course of any given period, Nexsen Pruet, its attorneys, its staff, and its other employees may be a creditor or a debtor of the United States of America, the State of South Carolina, the State of North Carolina and/or another state, depending upon whether tax payments exceed or are less than the tax liability owed by such person. For example, at a given point in the year, an individual might be due a tax refund or owe an additional amount of taxes. These matters are unrelated to this case.

e. Upon further review of the mailing matrix, Nexsen Pruet will supplement this information if it determines that relationships with creditors of the bankruptcy estate exist. The POA is informed and believes that any such relationship, if it exists, is not adverse to the bankruptcy estate.

12. The POA and Nexsen Pruet have agreed that Nexsen Pruet's attorneys and paralegals will bill at their customary hourly rates for their services rendered in connection with

Nexsen Pruet's representation of the POA in this case. These rates are as follows:²

<u>Attorney/Paralegal</u>	<u>Hourly Rate</u>
Julio E. Mendoza, Jr.	\$515.00
Edward G. Menzie	\$420.00
Kyle A. Brannon	\$325.00
Janette P. Carter (Paralegal)	\$220.00

13. The POA and Nexsen Pruet understand that Nexsen Pruet's compensation for its representation of the POA in this case will be determined by the Court pursuant to 11 U.S.C. § 330(a) and that the amount of compensation set by the Court may differ from the compensation agreed by the POA and Nexsen Pruet.

WHEREFORE, the POA prays that it be authorized to employ Nexsen Pruet, LLC as its attorney in this case with compensation to be set by the Court upon application.

RESPECTFULLY SUBMITTED on this 8th day of May, 2020, at Columbia, South Carolina.

FOXWOOD HILLS PROPERTY
OWNERS ASSOCIATION, INC.

/s/ Gregory B. Sheperd
By: Gregory B. Sheperd, President

² The list of attorneys and paralegals included in this Application is not intended to preclude or limit the use of other Nexsen Pruet attorneys or paralegals in this case. The attorneys and paralegal listed herein are the persons expected to be most involved in the representation of the POA in this case.

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

In re:

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Debtor.

Case No. 20-02092

Chapter 11

**STATEMENT OF NEXSEN PRUET, LLC PURSUANT TO
RULE 2014 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE**

Julio E. Mendoza, Jr., who, being duly sworn, deposes and says that:

1. I am a duly licensed and practicing attorney in the State of South Carolina and I am a member of the law firm of Nexsen Pruet, LLC (“**Nexsen Pruet**”), which has offices in Charleston, Columbia, Greenville, Hilton Head Island and Myrtle Beach, South Carolina, and in Charlotte, Greensboro and Raleigh, North Carolina. I am authorized to make this statement on behalf of Nexsen Pruet.

2. Nexsen Pruet is organized and existing pursuant to the laws of the State of South Carolina for the purpose of the practice of law. Its attorneys regularly appear in matters before this Court.

3. Both Nexsen Pruet and I are disinterested persons in this case as that term is defined in 11 U.S.C. § 101(14). Neither I nor Nexsen Pruet hold or represent any interest adverse to the estate.

4. Foxwood Hills Property Owners Association, Inc. (the “**POA**”), the debtor and debtor-in-possession in this case, has requested that Nexsen Pruet serve as its attorney in this case.

5. I am in the process of reviewing the lists of parties in this case and, to the best of my knowledge and belief, Nexsen Pruet has no connection with the POA, its creditors, any other parties in interest, their respective attorneys and accountants, the United States Trustee (the “UST”), or any person employed in the office of the United States Trustee, except as follows:

a. Prior to the commencement of this case, Nexsen Pruet represented the POA in analysis of the issues confronting the POA; as co-counsel with other counsel in litigation over certain real property issues; and in preparations for the filing of this case.

b. Nexsen Pruet has represented First Citizens Bank and Trust Company, a secured creditor of the POA, in various matters unrelated to the POA or this case. The fees received by Nexsen Pruet from First Citizens Bank and Trust Company amount to less than One Percent (1.0%) of Nexsen Pruet’s annual revenues. Nexsen Pruet is also a tenant of First Citizens Bank and Trust Company, for the firm’s Columbia, South Carolina office. Upon information and belief, neither Nexsen Pruet’s representation of First Citizens Bank and Trust Company in those other matters nor Nexsen Pruet’s lease relationship with First Citizens Bank and Trust Company will adversely impact Nexsen Pruet’s representation of the POA in this case.

c. Nexsen Pruet and its attorneys and staff have worked with numerous attorneys, accountants, other professionals, staff persons, and other persons who may, or may not, appear in this and other cases, and Nexsen Pruet’s attorneys, staff and employees may have social and professional relationships with various other attorneys and professionals who from time to time appear in matters before this Court, and with members of the Court and Court personnel. Any such relationships or connections are unrelated to this case.

d. From time to time during the course of any given period, Nexsen Pruet, its attorneys, its staff, and its other employees may be a creditor or a debtor of the United States of

America, the State of South Carolina, the State of North Carolina and/or another state, depending upon whether tax payments exceed or are less than the tax liability owed by such person. For example, at a given point in the year, an individual might be due a tax refund or owe an additional amount of taxes. These matters are unrelated to this case.

e. Upon further review of the mailing matrix, Nexsen Pruet will supplement this information if it determines that relationships with creditors of the bankruptcy estate or other parties in interest exist. Upon information and belief, any such relationship, if it exists, is not adverse to the bankruptcy estate.

6. Prior to the commencement of this case, the POA paid Nexsen Pruet on a current basis for the matters leading to, and for the preparations for, the filing of this case. In addition, prior to the filing of the case, the POA provided a retainer in the amount of \$50,000.00 to Nexsen Pruet for application towards payment to Nexsen Pruet for post-petition services and costs incurred. At this time, the only charge paid from the retainer is the filing fee for this Chapter 11 case. Nexsen Pruet shall not use the balance of the retainer unless and until it has obtained authorization from the Court.

7. The POA and Nexsen Pruet have agreed that Nexsen Pruet's attorneys and paralegals will bill at their customary hourly rates for their services rendered in connection with Nexsen Pruet's representation of the POA in this case. These rates are as follows:¹

<u>Attorney/Paralegal</u>	<u>Hourly Rate</u>
Julio E. Mendoza, Jr.	\$515.00
Edward G. Menzie	\$420.00
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¹ The list of attorneys and paralegals included in this Application is not intended to preclude or limit the use of other Nexsen Pruet attorneys or paralegals in this case. The attorneys and paralegal listed herein are the persons expected to be most involved in the representation of the POA in this case.

Janette P. Carter (Paralegal) \$220.00

8. The POA and Nexsen Pruet understand that Nexsen Pruet's compensation for its representation of the POA in this case will be determined by the Court pursuant to 11 U.S.C. § 330(a) and that the amount of compensation set by the Court may differ from the compensation agreed by the POA and Nexsen Pruet.

/s/ Julio E. Mendoza, Jr.

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

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Attorneys for Debtor Foxwood Hills
Property Owners Association, Inc.

May 8, 2020
Columbia, South Carolina

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

In re:

Foxwood Hills Property Owners
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Debtor.

Case No. 20-02092-hb

Chapter 11

**ORDER AUTHORIZING THE EMPLOYMENT OF NEXSEN PRUET, LLC
AS COUNSEL FOR THE DEBTOR EFFECTIVE MAY 8, 2020**

THIS MATTER came before the Court upon the application (the “**Application**”) of Foxwood Hills Property Owners Association, Inc. (the “**POA**”), as the debtor and debtor-in-possession in this case, for authority to employ Nexsen Pruet, LLC (“**Nexsen Pruet**”) as counsel for the POA in this case, pursuant to 11 U.S.C. §§ 327(a) and 1107(b) and Rule 2014 of the Federal Rules of Bankruptcy Procedure. Upon the Application, it is hereby

ORDERED that the POA is authorized to employ Nexsen Pruet for the purposes described in the Application. The POA filed the Application on May 8, 2020 and pursuant to SC LBR 2014-1, the employment shall be effective from that date. The compensation shall be set by the Court according to 11 U.S.C. § 330(a) and, therefore, may be different from the terms of compensation discussed by the POA and Nexsen Pruet.

AND IT IS SO ORDERED.